

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-6070

76-6080

Signed

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOSEPH C. WEBER, INC.,

Plaintiff-Appellee-Cross-Appellant

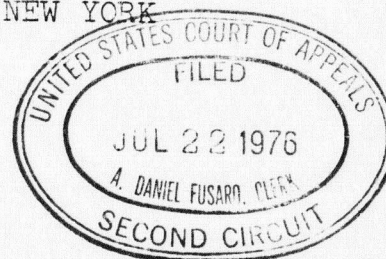
v.

UNITED STATES OF AMERICA,

Defendant-Appellant-Cross-Appellee

ON APPEALS FROM THE JUDGMENT OF THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT OF NEW YORK

APPENDIX
(Vol. II (pp. 137-272))



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1 A. Yes. \$2,530.45.

2 Q. And can you look through the rest of the documents there
3 and tell the Court and the jury whether those documents
4 are all similar to the first two that you have described,
5 and also look to see if your signature is on those
6 documents.

7 A. The documents are the same. I see a different product
8 mentioned on one of them.

9 Q. What product is mentioned on that one?

10 A. This one is in printing and it says, "Number 6 fuel oil".
11 That is the one on 10-23-64.

12 Q. And what are the rest of them?

13 A. There is one form here on 2-28-64 that is made on a
14 different form but it appears to be a similar type credit.

15 Q. What type of fuel do the other documents refer to? You
16 say one was Number 6 fuel oil?

17 A. Yes. Well, the majority, the rest of it is kerosene
18 and Mobil heat.

19 Q. What is Mobil heat?

20 A. That is Number 2 fuel oil. Kerosene is Number 1 fuel
21 oil.

22 Q. Do you know which is the one used in homes?

23 A. Well, they use both; Primarily Number 2.

24 Q. Mobil heat?

25 A. Yes.

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1 MR. JONES: I would like to move Exhibit 13
2 into evidence.

3 MR. RAICHLE: I object to it in view of all the
4 confusion concerning it and the lack of
5 foundation.

6 THE COURT: Exhibit 13; Where is 13?

7 MR. JONES: Excuse me. Isn't that the proper
8 number?

9 THE COURT: 12 is in evidence, Mr. Jones. I
10 don't know where 13 is.

11 MR. JONES: My mistake. It should be 12.

12 THE COURT: It is marked in evidence. Can I
13 see that, please?
14

15 BY MR. JONES:

16 Q Now, based upon your position with the Mobil Company in
17 '64, can you explain what a temporary allowance is?

18 A Yes. The market was very competitive then and competitive
19 companies would visit our suppliers, - our distributors
20 and make offers at lower than posted prices and sometimes, -
21 well, it would be twenty-five points up to whatever and
22 in order for us to keep the business we would endeavor
23 if we could substantiate the competitive offer and the
24 only way we could give, - it was a competitive allowance
25 and the only way we could give it would be to have.

1 substantial evidence that the offer had been made by
2 somebody else and then we would meet that offer through
3 a competitive allowance.

4 Q And how did that work, if you know?

5 A Well, it worked through these credits that authorized, -
6 these authorized credits.

7 Q And do you know how they were calculated? Did they
8 have any connection with the gallonage?

9 A Yes. They were calculated with the gallonage and an
10 agreement would be made with whoever the distributor
11 was, based on the competitive offer of whatever, twenty-
12 five points or whatever it might be and that would be
13 computed times the gallons and that would be what the
14 credit would be during a specific period.

15 Q And then a check would be authorized for that amount?

16 A Either that or a credit, which ever was desired by the
17 distributor.

18 Q Now, did you have any contact with, - you did have
19 contact with Mr. Joseph Weber during 1964, did you not?

20 A To the best of my knowledge. I can't remember too well
21 ten years ago but I would say that I did. I think we
22 only did business about a year and a half, something
23 like that, two years at the most.

24 Q I would like to show you Exhibit 11 for identification.
25 It is a copy of a letter and ask you if you can identify

1 that?

2 A Yes. This is a letter from Mr. Weber to me canceling
3 the contract.

4 Q Does that, - do you recognize that as being a letter
5 that you received?

6 A To the best of my knowledge, yes.

7 MR. JONES: I would like to move Exhibit 11 into
8 evidence.

9 MR. RAICHLE: No objection; Go ahead.

10 THE COURT: All right. Mark 11 in evidence,
11 please.

12
13 (Defendant's Exhibit Number 11
14 received in evidence.)

15
16 BY MR. JONES:

17 Q Now, that letter refers to a 1958 contract and I want
18 to show you Exhibit 8. Do you recognize that? It has
19 been admitted in evidence as a distributor agreement
20 between Mobil Company and the Weber Oil Company dated
21 1958.

22 A I recognize it as a Mobil contract. I wasn't involved
23 in it at the time. This was '58.

24 Q Do you know whether or not - -

25 MR. RAICHLE: You dropped your voice. You weren't

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1 involved in the contract?

2 THE WITNESS:

3 This contract was dated 1958. I
4 wasn't here in 1958.

5 BY MR. JONES:

6 Q Do you know whether or not that contract is the contract
7 referred to in this letter, Exhibit 11 which you just
8 identified being a letter from Mr. Weber?

9 MR. RAICHLE:

10 I will agree with you. You don't
11 have to prove it. I will stipulate it
12 and I won't welsh on the stipulation
13 either.

14 THE COURT:

15 That is the letter terminating the
16 agreement of 1958?

17 MR. JONES:

18 That is Exhibit Number 8.

19 THE COURT:

20 Stipulated to. Next question, please.

21 BY MR. JONES:

22 Q Now, how long did you deal with the Weber Oil Company,
23 you yourself?

24 A I would say that it was under my, - in my district for, -
25 I would guess a couple years, a year and a half to two
years.

MR. RAICHLE:

From when to when?

THE WITNESS:

Well, let me see. The end of 1963

1 until, - I would say sometime in the end
2 of '65, somewhere in that period. The
3 reason for it was the areas were reorganized
4 after that.

5 MR. RAICHLE: I am awfully sorry.

6 THE COURT: You have to keep your voice up, Mr.
7 Pfitzinger.

8 THE WITNESS: The areas were reorganized after
9 that and it was put back in the Buffalo
10 District.

11
12 BY MR. JONES:

13 Q Now, I am not sure whether you can answer this or not,
14 Mr. Pfitzinger, but showing you Exhibit Number 9 with
15 some slips of paper attached, do you recognize your
16 initials on the lower slip of paper there?

17 A They are my initials on the bottom slip of paper dated
18 1-13-65, yes.

19 Q And were you dealing with Mr., - the Weber Oil Company
20 at the time that that slip was placed on there, if you
21 know?

22 A Yes.

23 Q And was that a part of the contract?

24 A It was made a part of the contract.

25 MR. RAICHLE: That is a legal conclusion.

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1 THE WITNESS: This contract is not - -
2 MR. RAICHLE: I object to that.
3 THE COURT: Just a minute. I will overrule
4 your objection. Next question, please,
5 Mr. Jones.
6
7 BY MR. JONES:
8 Q Mr. Pfitzinger, did Mr. Joseph Weber, individually
9 perform any services for the Mobil Oil Company?
10 MR. RAICHLE: I object to this. He is there two
11 years. Now - -
12 THE COURT: If you know. I will overrule the
13 objection. Do you know whether or not he
14 performed any services as an individual
15 for Mobil Oil Company?
16 THE WITNESS: Performed no services. He bought
17 our products.
18 MR. RAICHLE: No, he didn't buy the product. That
19 is just the point about it. If you're
20 going to be technical as to distinguishing
21 between "He" and "It" meaning the corpora-
22 tion, you don't claim Weber purchased
23 your product.
24 THE WITNESS: We sold it to the Weber Oil Company.
25 MR. RAICHLE: That is it.

1 THE WITNESS: All right.

2 MR. RAICHLE: And you don't call that a service.

3 That's all.

4 MR. JONES: Would your Honor allow me just a
5 moment?

6 THE COURT: Surely.

7 MR. JONES: That is all I have, Mr. Pfitzinger,
8 thank you.

9
10 CROSS EXAMINATION BY MR. RAICHLE:

11 Q Now, Mr. Pfitzinger, what does "Temporary" mean to you?

12 A Not forever.

13 Q Well, that isn't what the oil companies tell the
14 Federal Trade Commission, is it? They say that it is
15 for a brief period of time when particular competition,
16 usually some fellow across the street starts up, isn't
17 that right?

18 A Well, it is not somebody across the street.

19 Q What?

20 A It is for a stipulated period of time. It is not
21 forever, as I said.

22 Q Well, it isn't for fifteen years, is it?

23 A It is for a stipulated period of time, as long as the
24 competitive situation exists.

25 THE COURT: Mr. Pfitzinger, you are in the business.

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1 How often would you review these things?

2 THE WITNESS: We would have to review them if the
3 competitive situation changed.

4
5 BY MR. RAICHLE:

6 Q It isn't the temporary allowance and the only temporary
7 allowance allowed by law when there is a gas war, some
8 fellows cutting prices across the street or on another
9 corner within a certain area and to meet his competition
10 you temporarily go down to his price, isn't that all in
11 the world it means?

12 MR. JONES: I am going to have to object to
13 these questions about what is allowed
14 by law. The witness isn't a legal expert.

15 MR. RAICHLE: You were trying to make him one a
16 while ago without much success.

17 THE COURT: He should be able to give us a
18 definition of what is meant by "Temporary".
19 Mr. Pfitzinger, it must mean in your
20 business something less than what you
21 have described it. Wouldn't you have some
22 duties for Mobil to check this out?

23 THE WITNESS: That's what I said.

24 THE COURT: You are talking about competition.

25 You are the Mobil Oil Company. Other large

1 oil companies also sell heating oil. What
2 was some of the others in the area that
3 sold heating oil at that time?

4 THE WITNESS: Any of the majors, probably.

5 THE COURT: Can you name a few? Why do you have
6 to leave everything so fuzzy?

7 THE WITNESS: Well, Exxon. I don't know who was
8 in this market ten years ago.

9 THE COURT: You mean like Esso or Texaco?

10 THE WITNESS: Right.

11 THE COURT: Or Gulf?

12 THE WITNESS: Or some independent. It wouldn't
13 have to be them.

14 THE COURT: Next question, Mr. Raichle.

15
16 BY MR. RAICHLE:

17 Q Would a month be temporary?

18 A Sure, yes.

19 Q It would be comprehended by the term "Temporary Allowance",
20 wouldn't it, a month would be temporary?

21 A Would be temporary. I said "Yes".

22 Q Now, the only documents you have seen here pertaining
23 to a short period of time in '64, isn't that so?

24 A I don't remember the dates. It seemed like most of them
25 were '64. I think there was at least one there in '65.

*

*

*

1 A Yes.

2 Q And who was being given the credit? Was it Weber Oil,
3 Joseph C. Weber Oil Corporation or Incorporated?

4 A We were - -

5 Q Who was receiving the credit, or don't you know?

6 A Well - -

7 THE COURT: Mr. Raichle, please, you have asked
8 the witness a question.

9 MR. RAICHLE: I was trying to help him out.

10 THE COURT: Let him answer the question.

11 MR. RAICHLE: I was trying to help him.

12 THE COURT: If you put a question, he doesn't
13 need any help. He is the witness. He is
14 the fellow who is familiar or ought to be
15 familiar. Let him answer.

16 MR. RAICHLE: All right, sir.

17 THE WITNESS: What happened when this - -

18 MR. RAICHLE: Oh, I think I am entitled to an
19 answer.

20 THE COURT: He is starting an answer. Give the
21 answer, please, Mr. Pfitzinger.

22 THE WITNESS: This authorizes a credit to the Weber
23 Oil Company and the statement at the
24 bottom is to issue a check to Mr. Weber.
25

1 BY MR. RAICHLE:

2 Q Now, it doesn't say "Issue a check to Mr. Weber", does
3 it?

4 A It says, "Make out and mail check to Joseph C. Weber".

5 Q All right. Who was the check to be payable to, does
6 it say?

7 A It says exactly what I just said.

8 Q It says, "Make out - -".

9 A "and mail check to Joseph C. Weber".

10 Q Yes. To whom was the check mailed?

11 A I don't have the slightest idea ten years ago.

12 Q Where is the check?

13 A I don't know.

14 Q How is it we don't have records for '63 and '65, only
15 for a short period in '64?

16 A I don't know. I've just been subpoenaed here. I haven't
17 done any research on this.

18 Q All right. Now let me invite your attention to something.
19 What was the amount of Mr. Joseph Weber's commission,
20 do you know?

21 MR. JONES:

I will object to this, your Honor,
22 because the witness has never used the
23 word "commission".

24 THE COURT:

I will overrule the objection. The
25 question is, "What was the amount of Mr.

1 Weber's commission, if you know".

2 THE WITNESS: I don't know that there was a
3 commission. I call this a credit.
4

5 BY MR. RAICHLE:

6 Q Well, call it what you will. Did the Weber Oil Company,
7 the Corporation receive a commission from time to time?

8 A I never knew it as a commission. I never called it a
9 commission.

10 Q All right. Where is that? Doesn't the very document
11 that Mr. Jones showed you provide for a commission to
12 the oil company, the Weber Oil Company, the Corporation?

13 A What document of Mr. Jones' are you referring to?

14 Q Well, I will get his. I have got a copy.

15 THE COURT: Can we use the one that is in
16 evidence, please. Can you find it, Mr.
17 Stephens for us?

18 MR. STEPHENS: It is Defendant's 8, the '58 contract.
19

20 BY MR. RAICHLE:

21 Q Mr. Jones showed you this contract dated July 25, 1958
22 between the Mobil Oil Company and the Weber Oil Company,
23 the Corporation, right; didn't he show you that?

24 A He showed me that, yes.

25 Q Yes. You just told me that you never heard and didn't

1 know about any commission that the corporation was
2 getting, didn't you?

3 A No, I didn't say that at all.

4 Q Did you know that the corporation was getting a
5 commission?

6 A No. I don't know of any commission, no.

7 Q Doesn't this document, this contract which you have
8 been looking at, say this, "Seller", that's Mobil, right?

9 A Yes.

10 Q "will allow buyer a commission of one quarter cent per
11 gallon on all Mobilheat and/or six fuel oil tank car
12 accounts which buyer secures for seller provided
13 approval has been granted by seller", doesn't it say
14 that?

15 A That's right.

16 Q Now, that is an entirely different commission then the
17 one we have been talking about here for two days, isn't
18 it?

19 A It is not what I am talking about. I am talking about
20 those credits that were shown to me. I said that I
21 didn't think that they were commissions. I said they
22 were credits.

23 Q Well, I am not going to be thrown off the track here.
24 This document, this 1958 contract provides for a
25 commission of a quarter of a cent on new business, doesn't

1 it?

2 A That is what it says.

3 Q Yes, no doubt about that, is there? Now, this front
4 page of this package of documents here, the one dated
5 August 25, 1964 says, "Charge realization temporary
6 allowance provides for a quarter of a cent", doesn't it?

7 A That is what it says, yes.

8 Q Yes, and the commissions or the payment to Mr. Weber
9 individually were not a quarter of a cent, were they?
10 Call the payment anything you want to call it, isn't
11 that right?

12 A Are you referring to this particular sheet or what?
13 They are all over the lot. They are all different.

14 Q They are all different, that's right. When emergencies
15 arose you allowed a temporary allowance to the oil
16 company, didn't you, to the corporation, Weber Corpora-
17 tion?

18 A I wouldn't call it an emergency. If there was a
19 competitive situation and we could be sure it existed
20 we would try to meet it, yes.

21 Q On a temporary basis?

22 A Right.

23 Q And in this case, - strike that out. How many temporary
24 occasions were there?

25 A I wouldn't be able to remember at this point.

1 Q Well, were there two or three or - -

2 A This was ten years ago, sir. I can't remember.

3 Q Well, do you remember anything that you have told
4 us any better than you remember that?

5 A I have been very factual in everything I have told you.

6 Q What?

7 A I have been factual in everything I have told you.

8 Q Well, the most factual one is when you don't remember
9 anything.

10 THE COURT: Excuse me. There is no objection,
11 but I believe that is argumentative.

12 MR. RAICHLE: All right.

13 THE COURT: Let us go on to something else.

14

15 BY MR. RAICHLE:

16 Q All right. Now then, you made no deal with Mr. Weber,
17 did you?

18 A Periodically we made deals on these competitive
19 allowances, yes.

20 Q Yes.

21 A Through the salesman, but I had to authorize it.

22 Q Periodiacally. How many different periods were there?

23 A I told you I can't remember.

24 Q Now, the oil business back in the sixties was very
25 competitive, wasn't it?

1 A Correct.

2 Q And you might say it was a buyer's market, you were
3 all out scrambling for business, all the majors,
4 weren't you?

5 A We are always scrambling for business.

6 Q And you were in those days, right?

7 A Correct.

8 Q All right. Now then, in your business were you
9 familiar with the Robinson-Patman Act and the rulings
10 under it?

11 A We - -

12 MR. JONES: I object to his familiarity with
13 the Robinson-Patman Act.

14 MR. RAICHLE: I am just asking.

15 THE COURT: All he is asking is was he familiar.
16 We don't know, Mr. Jones. I have never
17 met Mr. Pfitzinger before. He might be
18 well versed in the Robinson-Patman Act
19 and he may not be. He is the only fellow
20 who knows and he is the only person who
21 can answer.

22 THE WITNESS: We have a legal department who lays
23 down the guidelines and protects us from
24 violating any acts.
25

1 BY MR. RAICHLE:

2 Q Yes. The Robinson-Patman Act, I guess everybody agrees,
3 relates to prices, doesn't it?

4 A I am not an attorney. I can't tell you.

5 Q Obviously you know that much about it or you couldn't
6 be in an oil company office and not know about it,
7 could you?

8 A Well, it is, you know, whether it is Robinson-Patman
9 or some other name, I can't remember. We have lawyers
10 that protect us from these things and spell out the
11 guidelines.

12 Q Well, the lawyers aren't the ones making out these
13 checks, were they?

14 A They keep us from doing anything illegal.

15 MR. STEPHENS: All the time?

16 THE COURT: Wait a minute, Mr. Stephens.

17 MR. STEPHENS: I am sorry, your Honor.

18 THE COURT: All right. Next question, please,
19 Mr. Raichle.

20
21 BY MR. RAICHLE:

22 Q Then if you were paying commissions, there was nothing
23 illegal in the payment of commissions, was there?

24 MR. JONES: Your Honor, the witness never said
25 that he paid commissions.

1 MR. RAICHLE: Well, I showed him this thing which
2 says they were paying commissions and
3 he said they did. Is this the truth
4 that is written in these documents or
5 isn't it?

6 MR. JONES: Your Honor, I have to object.

7 THE COURT: I do not think there is any charge
8 here by anybody that any payments made
9 here were illegal at all or a violation
10 of any Federal Law, Robinson-Patman or
11 any other law.

12 MR. RAICHLE: That is what I am trying to - -

13 THE COURT: I think we ought to go on to some
14 other subject. Next question, please.

15 MR. RAICHLE: I think we ought to go on to a good
16 witness. That is all.

17 THE COURT: All right. Strike the last remark
18 and the jury not consider it. Any further
19 questions, Mr. Jones?

20 MR. JONES: That is all I have, your Honor.

21 THE COURT: Thank you, Mr. Pfitzinger.

22 MR. JONES: I ask that Mr. Raichle's last remark
23 be stricken.

24 THE COURT: I have already stricken it.

25 MR. RAICHLE: I am sorry. Strike it out.

1 THE COURT:

Ladies and gentlemen, so I can discuss some matters with the attorneys, will you please go to the jury room for a little while and we will be in touch with you very soon.

2
3
4
5
6
7 (Jury escorted from the courtroom.)

8
9 THE COURT:

All right.

10 MR. RAICHLE:

I don't care who goes first.

11 THE COURT:

All right. At this stage of the case, I don't know. Mr. Jones.

12
13 MR. JONES:

14 May it please the Court, the defendant renews its motions for a directed verdict at the conclusion of all the evidence upon the grounds that there is absolutely no evidence that these commissions, payments, temporary allowances, whatever they were called, were earned by Mr. Weber individually in a separate capacity from the Weber Oil Company. I believe all the evidence shows that it was based upon the amount of gallons purchased by the Weber Oil Company from the Mobil Oil Company and under those circumstances, the rebates or

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1 payments, whatever they are, are properly
2 includable in the income of the Weber Oil
3 Company and with regard to the issue of
4 compensation, your Honor, there has been
5 absolutely no evidence that these payments
6 were intended as compensation from the
7 Weber Oil Company to Mr. Weber. The tax
8 returns indicate that Mr. Weber was paid
9 as chief executive officer, I believe
10 \$42,000 in 1963 and fifty one or fifty-
11 two in 1964 and 1965. There has been no
12 evidence from books and records or other-
13 wise that anything different was intended
14 as far as the Weber Oil Company was con-
15 cerned and, therefore, we believe that the
16 matter of reasonable compensation should
17 not go to the jury because there is no
18 evidence that these payments were ever
19 intended as compensation and under the cases
20 cited in our brief, we believe that is
21 essential.

22 THE COURT:

Mr. Raichle.

23 MR. RAICHLE:

24 If your Honor please, I move that the
25 Court direct a verdict in favor of the
plaintiff and I move separately with

1 respect to each count of the complaint.
2 Remember that Count 1 refers to '63; Count
3 2 to '64 and Count 3 to '65. Therefore,
4 I respectfully move for a directed verdict
5 in favor of the plaintiff.

6 THE COURT: Was there anything else, Mr. Raichle,
7 or is that it?

8 MR. RAICHLE: That is about it.

9 THE COURT: I will deny motions on both sides,
10 the plaintiff's motion and the defendant's
11 motion. It seems to me that the issues
12 here should be submitted to the jury.

13 MR. RAICHLE: Could I ask your Honor before we sum
14 up, if you are going to submit it on
15 special questions, and if so, what are the
16 questions, or are you going to submit - -

17 THE COURT: Yes. I think it is certainly very
18 important that we talk about the requests
19 and the proposed questions. Mr. McCloud,
20 can you step up, please. Mr. McCloud, why
21 don't you stand down there because I want
22 to ask you a question. As I understand it,
23 as you were going out, Juror Number 5 told
24 you that she was acquainted with Mr.
25 Berger, the last witness.

1 answer Question 2 in such a fashion then
2 you will then proceed to answer Question
3 3".

4 MR. CURTIN:

5 So if the jury were to find in Ques-
6 tion 2, the payments were intended to be
7 compensation, Number 3 would be "Were
8 they reasonable in amount".

9 THE COURT:

10 Mr. Raichle, looking at this broadly,
11 I think in my view there should be three
12 questions put to the jury here along the
13 general nature of what we have talked
14 about. What are your suggestions?

15 MR. RAICHLE:

16 Well, I don't think the first question
17 should be worded as counsel suggests and
18 the question of who earned the commissions,
19 the question of whether the commission
20 should have been, say, half of what they
21 were or a third of what they were. The
22 question is, were they paid to Mr. Weber
23 for services performed by Mobil Oil or
24 whether they weren't. The jury certainly
25 can't pass on, - Suppose they decided
they were earned one half by one and one
half by the other. Neither side has
offered any proof. I rely on the stipula-

1 tion, but they haven't offered any proof
2 that the commissions were too much or
3 too little. I think the question is were
4 the commissions paid to Mr. Weber for
5 services performed for Mobil Oil, to wit,
6 selling the gasoline as their own witness,
7 or rather, the heating oil to Weber,
8 Incorporated.

9 MR. CURTIN:

Your Honor, the problem, and it has
10 been a big problem in this case so far,
11 is the use of the word "paid", because it
12 is easy to say it was paid to Mr. Weber
13 individually. Mr. Jones certainly hasn't
14 denied that. Payment is a physical act
15 of payment, handing it over. Mr. Weber
16 obviously received the money. We are not
17 contending he didn't. The substance of
18 the case is who earned it. Maybe that is
19 not the best way to describe it, but that
20 is the only word we have got.

21 THE COURT:

I think here I should not use the
22 words "payment" or "compensation", or
23 maybe I should use both words, which satis-
24 fy neither. I think I have to use a
25 word no one likes.

1 MR. RAICHLE:

I am not so hidebound to the word
2 "commission", but I think that is what we
3 are entitled to, but what I object to is
4 this business of earned. That isn't the
5 test.

6 THE COURT:

You say the first question in my
7 proposal is to say, "Were the monies paid
8 by Mobil Oil Company to Mr. Joseph Weber".
9 Mr. Raichle objects to the use of the
10 word "earned by Joseph C. Weber, Incorporated",
11 and is that the proper word
12 there, Mr. Curtin?

13 MR. CURTIN:

Your Honor, I believe it is based
14 on the authorities. That is the way all
15 of the cases - -

16 MR. RAICHLE:

Oh, it is not. Well, pardon me.

17 MR. CURTIN:

The stipulation in my opinion is inconsistent,
18 to say the least.

19 MR. RAICHLE:

That is the point. They want to get
20 away from the stipulation and I am going
21 to be just as stubborn as they are.

22 MR. CURTIN:

If we go back to the stipulation,
23 the word "earned" is the word used in the
24 first issue stated. In other words, were
25 the commissions actually earned by the

1 corporation is how that particular para-
2 graph ends up, so if Mr. Raichle wants to
3 stick with the stipulation - -

4 MR. RAICHLE:

I sure do.

5 MR. CURTIN:

Then we have got the word "earned".

6 I am not saying that is the best, but that
7 is what the cases talk in terms of and
8 I think that is the substance of the tax
9 law. Mr. Raichle I can see, and I can see
10 his point, would like to submit it on the
11 word "payment", but that is erroneous
12 because payment is the physical act. The
13 jury could easily come back and say,
14 "Certainly, he received, he was paid the
15 money". I don't think Mr. Jones could
16 contest otherwise.

17 THE COURT:

18 In your trial memorandum, you used
19 the phrase "If the commissions or payments
20 are found to be properly includable in
21 the income of Joseph C. Weber", does it
22 help or is it correct to say "Are the
23 commissions or payments which Mobil Oil
24 made to Joseph C. Weber properly includable
25 in the income of the Weber Oil Company".

MR. CURTIN:

I think that is proper. I think that

1 is what the tax law says. That is a
2 conclusion of whether or not they earned
3 it. The use of the word "earns" puts us
4 closer to - -

5 THE COURT:

You do have, of course, the questions
6 will be answered after the instructions are
7 given and we hope that after the jury
8 listens to the summations and the instruc-
9 tions, that they will be well schooled
10 enough to then approach the questions and
11 make appropriate answers.

12 MR. RAICHLE:

Well, it shouldn't turn on the word
13 "earned".

14 THE COURT:

You say, you use the words "properly
15 includable as income", rather than "earned".

16 MR. CURTIN:

In the brief, that is what is
17 stated.

18 THE COURT:

All right. You think it would be
19 appropriate to change the language from
20 "earned" to "properly includable as income"?

21 MR. JONES:

Yes.

22 MR. CURTIN:

The point Tom is making is the word
23 "earned" in our opinion is a better word.

24 MR. RAICHLE:

Sure.

25 MR. CURTIN:

It is easier for the jury to under-

1 stand "earned" than ask them, "Is it in-
2 cludable in income or not". It sounds
3 like an accountant's question rather than
4 a fact question. In other words, who
5 earned it, who did the work for it is what
6 we are getting at, and if we could say it
7 in those terms, we would be better off.

8 THE COURT:

Mr. Raichle.

9 MR. RAICHLE:

10 Well, I don't want to be unduly
11 repetitious, but if you get into the realm
12 of "earned", you are going to have all
13 sorts of confusion, inevitably. I think
14 we are confused about it. It isn't a
15 question of earned. It is whether they
16 were paid for services and the question
17 should be just as I have it and I will be
18 as stubborn as they are. They want to
19 repudiate the stipulation. I have never
20 encountered this before in fifty-five years
21 of practice and that it should come from
22 my Government is particularly provoking.
23 I will try not to summon up any more
24 indignation than I can gracefully hold.

25 THE COURT:

In the question then, I will avoid
using the word "earned". Mr. White, could

1 you call the jury up, please, and tell
2 them to come back at 2:00 o'clock.

3 We will draft questions along these
4 lines. As far as the proposed instruc-
5 tions, you have some comments upon
6 particular instructions?

7 MR. RAICHLE: Well, do you mean theirs?

8 MR. JONES: Excuse me.

9 MR. RAICHLE: Part of it is boilerplate.

10 I object to the burden of proof.

11 THE COURT: That is - -

12 MR. RAICHLE: One.

13 THE COURT: That is Number 5, I believe. Is that
14 it?

15 MR. RAICHLE: It could well be, your Honor. I will
16 tell you, I want to be entirely frank with
17 the Court on this proposition of law. I
18 know that generally speaking, the findings
19 of the Commissioner are presumed to be
20 correct. That is part of the rubrics and
21 incantations which you encounter in the
22 tax court. I think it is more a rule of
23 the tax court than a rule of law. I
24 don't want to make it difficult for your
25 Honor. I will except to 5 as it is charged

1 and I will concede there is some authority
2 for its inclusion. That is the best I
3 can do. I disagree. I say when we have
4 this stipulation that changes the situa-
5 tion and I have a request on the subject
6 of the stipulation, but first let's
7 dispose of these. I will except to Number
8 5 or object to it. I object to the
9 Number 6 with this business about being
10 earned. I object to that stoutly.

11 THE COURT:

Of course, we have the section here
12 which defines "gross income", and then we
13 have the section but it doesn't use the
14 word "earned".

15 MR. RAICHLE:

No.

16 MR. CURTIN:

17 Your Honor, if I may be of help,
18 there is a Second Circuit case called
19 Stauss vs. Commissioner of Internal
20 Revenue and it is cited at 168 F.2 441
21 and it is an old case called Lucas vs.
22 Earl up in the Supreme Court and it refers
23 to it here. It says, "It has been well
24 settled since Lucas vs. Earl that compen-
25 sation derived for personsonal services
istaxable to the one who performs the

1 services whether or not he actually
2 receives the compensation or transfers
3 the right to receive it before it is
4 earned". The word "earned" has been used
5 since Lucas vs. Earl throughout tax laws.
6 I am not saying it is the clearest word.
7 It is too simple to be clear, I think.

8 THE COURT:

I think it is a word that certainly,
as far as the average juror is concerned,
it is one which he understands readily.

11 MR. CURTIN:

I agree.

12 THE COURT:

13 I don't like to give examples and
14 I won't give examples, Mr. Raichle, during
15 my charge, but I think all of this and
16 the jurors certainly would appreciate
17 this, that if they went to work for the
18 Mobil Oil Corporation or the City of
19 Buffalo and they did the work at the end
20 of the week, they would say, "Well, I
21 earned \$127.22", whatever it would be,
22 which is a term that people understand.

23 MR. RAICHLE:

To make it the test it repudiates
the stipulation and goes contrary to the
whole thing.

25 THE COURT:

I don't know, Mr. Raichle. If Mr.

1 Weber, if the agreement here, and if the
2 relationship between the parties was that
3 Mr. Weber, as an individual, did the work
4 as an individual, then it could be said,
5 that he earned the money. If, in fact,
6 the relationship between the parties was
7 that he was acting in behalf of the Weber
8 Oil Company and that the - -

9 MR. RAICHLE:

I don't object to - -

10 THE COURT:

11 Whatever was done here was done by
12 the Weber Oil Company then, of course, you
13 could say that the Weber Oil Company
14 earned the compensation, the commission,
15 the payment.

16 MR. RAICHLE:

17 But look how confusing this is. Take
18 Number 7 here. The second sentence,
19 "If, however, these payments were made to
20 Mr. Joseph Weber because of his position
21 and duties as majority stockholder and
22 president of Weber Oil Company, then this
23 would indicate that Weber Oil Company
24 earned these payments through its activi-
25 ties rather than any broker activities of
Mr. Weber". Why, of course, Mr. Weber
was in better position to sell to the

1 Weber Oil Company because of his position.
2 It is just like my selling something to
3 General Motors because I know the president
4 or I know the purchasing agent. The
5 compensation for selling something doesn't
6 always depend on the hours spent or even
7 the expertise.

8 THE COURT:

Let me ask you this, Mr. Raichle;
9 did Mr. Weber, putting his individual hat
10 on, did he receive separate payments or
11 commissions from anyone else?

12 MR. RAICHLE:

I am giving you an honest answer. I
13 don't know and I don't mind asking him if
14 you want me to.

15 THE COURT:

It is close, but maybe I should just
16 forget the question.

17 MR. RAICHLE:

But my point is that this second
18 sentence here coupled with this "earned"
19 business, just cuts the heart out of our
20 case and I know they quiver when I mention
21 the stipulation and maybe your Honor is
22 sick of hearing it, but it is the guts of
23 the case, if I might use an inelegant word.

24 MR. CURTIN:

I agree it is. It gets down to where
25 the case really is and if I may say, and I

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make - -

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THE COURT:

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MR. CURTIN:

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THE COURT:

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MR. CURTIN:

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MR. RAICHLE:

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THE COURT:

I think a railroad lawyer must have drawn that stipulation, didn't they, Mr. Raichle? Isn't that what, in this area here, we find we always charge railroad lawyers with saying one thing and meaning another?

Your Honor, if I may say, I think Mr. Raichle's point is, it shows that the stipulation itself is inconsistent. He obviously doesn't like the word "earned". It is used in the stipulation in the statement of the first issue. We don't like the word "commissions". If we, in fact, had stipulated that these commissions were, in fact, commissions earned by Weber as an individual, we wouldn't be here, obviously.

It is obvious from looking at the stipulation as a whole that it was the intent, at least of the Government, to leave the question open.

Right.

I thought - -

I think it ought to be left open.

1 MR. RAICHLE:

I thought you had ruled that you weren't going to use the word "earned"?

2
3 THE COURT:

If you don't want me to use it in the question, I won't use it, but I believe, and I will look at the case here, - I think it is a word which has a very simple meaning, a word in common usage as far as the average juror is concerned and I think it is a good word. It certainly indicates what the problem is between the parties.

12 MR. RAICHLE:

You certainly aren't going to charge the second sentence of 7?

14 THE COURT:

This is the one, "accordingly - -"

15 MR. RAICHLE:

No, "if, however - -"

16 THE COURT:

I will note your objection, Mr. Raichle, but - -

18 MR. RAICHLE:

Oh, I - -

19 THE COURT:

Just a minute. I think when you read the second sentence which begins "Accordingly, if Mr. Joseph Weber", and then you read the next sentence, you have both sides of the coin so that on the one hand the Government says, "If you find such and such", then, "if Mr. Joseph Weber

1 performed services for Mobil Oil as an
2 independent broker apart from the services
3 he performed for Weber Oil Company in
4 return for these" commissions or
5 "payments, this would indicate that he
6 earned these" commissions or "payments in
7 his individual capacity. If, however,
8 these" commissions or "payments were made
9 to Mr. Joseph Weber because of his position"
10 and so forth, "then this would indicate
11 that Weber Oil Company earned these pay-
12 ments through its activities". I think
13 it gives both sides of the argument.

14 MR. RAICHLE:

I object to it strenuously. That is
all I could do with it.

16 THE COURT:

All right. Any other - -

17 MR. RAICHLE:

18 Reading the changes on it, take 9,
19 the first sentence. That certainly is
out.

20 MR. CURTIN:

Your Honor, again, that is based on
the Second Circuit case.

22 MR. RAICHLE:

23 Oh, this reckless claim of something
24 being stated on the cases. If you want
me to analyze these cases, I can do it
25 and all they do here is to say it is

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1 PROCEEDINGS: November 5, 1975, 2:15 p.m.

2 APPEARANCES: As before noted.

3 (Jury not present.)

4
5 THE COURT: Mr. Raichle, Mr. Jones, I have con-
6 sidered the proposed instructions, looked
7 at some of the cases and thought about the
8 language and it seems to me that I should
9 continue to use the word "earned" because
10 that is the heart of the matter here and
11 if I use the words "properly includable",
12 I think that then you put to the jury
13 a burden of resolving a legal question
14 of tax law which is, - we should not
15 be required to put to them so on the ques-
16 tions I have a copy here. Mr. White,
17 could you give a copy, please, to Mr.
18 Raichle and one to Mr. Jones.

19 MR. RAICHLE: Thank you.

20 MR. CURTIN: Thank you, Mr. White.

21 THE COURT: Mr. Raichle, of course, we had dis-
22 cussed this at length before.

23 MR. RAICHLE: I'm sorry. I can't hear you.

24 THE COURT: I am sorry. We discussed this prob-
25 lem at length before the noon break, but

1 was ill-founded because then since he had
2 filed his returns you don't argue with
3 his arithmetical computation so that then
4 he would be entitled to a verdict in his
5 favor and reasonable compensation is be-
6 side the point.

7 MR. CURTIN:

Right, if they answer the first
8 question.

9 THE COURT:

All right.

10
11 (Jury returns to the courtroom.)
12

13 THE COURT:

Ladies and gentlemen, the evidence
14 is closed in this case. We are now ready
15 to hear the summations from the attorneys.
16 We will, after summations, then I will
17 charge you on the law which applies and
18 I will also supply you with a questionnaire
19 in which you will be asked to answer
20 certain questions so that when you are
21 listening to the summations, you will have
22 an idea about what you are going to be
23 finally asked to decide here I will read
24 the questions to you now.

25 The first question is, "Were the monies

1 paid by Mobil Oil Company to Mr. Joseph
2 Weber during 1963, 1964 and 1965 earned
3 by Joseph C. Weber, Inc.", in parentheses
4 "Weber Oil Company or by Joseph C. Weber,
5 individually", and then there are two
6 boxes. One is "Joseph C. Weber, Inc.",
7 and the other is "Joseph C. Weber", period,
8 and you will answer one or the other.

9 2, if the answer to Question 1 is
10 "Joseph C. Weber, Inc.", that is the
11 Weber Oil Company, "then answer this
12 question, were the monies paid intended
13 by Joseph C. Weber, Inc. to be compensation
14 or dividends to Joseph C. Weber as an
15 individual at the time these payments were
16 received by Joseph C. Weber", and then you
17 will then mark it either "compensation" or
18 "dividends".

19 3, "If the answer to Question 2 is
20 compensation, then answer this question;
21 was the compensation reasonable". The
22 answer will be "yes" or "no".

23 To help you put your minds at ease as
24 we go on during the summations, certainly
25 some of these terms will be discussed from

1 the viewpoint of both sides. I hope that
2 during my charge, that I will explain to
3 you these various terms and as we go on,
4 these things will become clear. The rules
5 provide that the defendant in this case,
6 The United States and Mr. Jones will talk
7 to you first and after that, Mr. Raichle,
8 in behalf of the Weber Corporation will
9 speak to you and I know you will give
10 close attention to both sides, so, Mr.
11 Jones, when you are ready, you may begin.
12 You may, if you desire, if you are going
13 to use some charts, - not charts, but
14 exhibits, you may pull the podium around
15 so it is facing the jury.

16 MR. JONES:

17 May it please the Court, ladies and
18 gentlemen of the jury, both sides have
19 presented their evidence in this case and
20 it is now time for you to sift through
21 the evidence, the facts and to decide what
22 the answer to the questions which Judge
23 Curtin is going to put to you are. First,
24 on behalf of myself and Mr. Curtin, and
25 I am sure I speak for Mr. Raichle and Mr.
Stephens also, I want to thank you for your

1 careful attention to the evidence in this
2 case. It has not been an easy case and
3 we both appreciate you listen to it
4 carefully.

5 Now, the first question that you are
6 going to have to answer is whether the
7 payments which were made by the Mobil Oil
8 Company to Joseph Weber, individually, were
9 actually earned by the Weber Oil Company,
10 Joseph Weber, Inc., or were they earned
11 by Joseph Weber, individually, in a
12 separate broker capacity. Now, the first
13 thing to realize is the fact that the
14 monies were received by Joseph Weber,
15 individually, is not important. It is not
16 the question of who received them. The
17 question is, who earned them. Were they
18 earned by Mr. Weber working on behalf of
19 Joseph Weber, Incorporated or not.

20 Now, whatever you call these payments,
21 whether you call them payments, commissions,
22 temporary allowance or what, there is not
23 a nickel's worth of evidence in the record
24 that Mr. Weber performed any services for
25 the Mobil Oil Company. The only thing that

1 he did was acting for his company, acquire
2 fuel from Mobil and that was the only
3 thing that gave rise to these payments.
4 It was a rate of .0065 dollars per gallon,
5 .65 cents per gallon. Mr. Weber would
6 show the amount of gallons that had been
7 purchased to Mobil and Mobil would author-
8 ize a check to be sent at Mr. Weber's re-
9 quest to him personally. It was really a
10 rebate, a cut in the price of fuel, and
11 you heard the witnesses from the Mobil
12 Oil Company testify, Mr. Goodwill testified
13 and produced the contracts between the
14 Weber Oil Company and the - -

15 THE COURT:

Excuse me, Mr. Jones. Do you have
16 the, - this is one of the papers.

17 MR. JONES:

I am looking for one through six.

18 THE COURT:

I think they are on the table. Those
19 are tax returns?

20 MR. JONES:

Yes.

21 THE COURT:

I think they are on the table

22 MR. JONES:

Now, you can look at both of the
23 documents that Mr. Goodwill produced.
24 They are both contracts between the Mobil
25 Oil Company and the Weber Oil Company and

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1 you can see that they are both signed
2 "Joseph C. Weber, Inc., Joseph C. Weber,
3 President", and "Weber Oil Company", and
4 the same thing on the other one "Joseph
5 C. Weber, President", so that these were
6 simply contracts whereby the Weber Oil
7 Company purchased the fuel oil from Mobil
8 and attached to this contract Number 9 is
9 a statement showing a special allowance
10 of .0065 cents per gallon so really, what
11 this amounted to was just something
12 knocked off the price of the fuel oil
13 that the Weber Oil Company bought from
14 the Mobil Oil Company, and you heard Mr.
15 Goodwill testify that these checks were
16 not sent to the corporation. They were
17 sent to Joseph Weber, individually, at
18 his request and you heard Mr. Pfitzinger
19 who was the retail sales manager for this
20 area in 1964 testify exactly what these
21 competitive allowances were, or special
22 allowances. It was something which Mobil
23 gave to its distributors if they could
24 come in and say, "Look, we have another
25 competitor who can sell us fuel oil a

1 little cheaper than you can, Mobil. Will
2 your match that price", and the price would
3 be matched in the form of this temporary
4 allowance, which, at Mr. Weber's request,
5 went back from the Mobil Oil Company to
6 Mr. Weber, individually.

7 Now, that is the evidence that we have
8 in this record. The evidence was presented
9 by the defendant and, of course, we didn't
10 bring everybody here from the Mobil
11 Company. Mr. Weber could have done that,
12 but what evidence do we have from the
13 plaintiff as to how these payments were
14 treated, what they really were, who earned
15 them. Believe me, if they were anything
16 but a cut in the price of fuel, you can
17 bet that Mr. Weber who sat here throughout
18 this trial would have taken the witness
19 stand and told you exactly how, when, why
20 and where the Mobil witnesses were wrong
21 or what his version of the facts was. He
22 didn't take the witness stand at all.

23 Now only that, but he didn't produce
24 one record, no corporate books, no docu-
25 ments, no records, so this is the evidence

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that we have.

We had Exhibit 12 produced by Mr. Pfitzinger identifying his signature showing these charge realizations, showing how the allowances, commissions, whatever you call them, were calculated and showing that they were mailed to Joseph C. Weber, individually, and you have a letter written by Mr. Weber to Mr. Pfitzinger talking about termination of one of the contracts in issue. That contract, believe me, was between the Weber Oil Company and the Mobil Oil Company.

Now, Mr. Weber wasn't any kind of broker acting for somebody else. He didn't have a separate individual business as a broker as Mr. Raichle suggested to you. There is simply no evidence of that in the record. If you look at the plaintiff's own exhibits, the tax returns, you can see that in the top right-hand corner where I believe these are 1, 2, 3, the individual tax returns of Mr. and Mrs. Weber, that he lists his occupation there as corporate officer, not as broker, and if you look

1 at the corporate tax returns, these are
2 the tax returns for Joseph C. Weber,
3 Incorporated which we sometimes call the
4 Weber Oil Company, you will see that he
5 is paid a certain amount of compensation
6 on Page 2, looking at Exhibit 5, the
7 return for the year ending June 30, 1963.

8 On Page 2, Joseph C. Weber, compensa-
9 tion of officers, \$41,000. That is not
10 these fees, these payments that we are
11 talking about. This is what Mr. Weber
12 actually got from his company and it says
13 "President and Treasurer, time devoted to
14 business, full", and that is the same
15 thing on these other tax returns, these
16 other corporate tax returns that you can
17 look at if you wish. You can see that
18 these indicate that Mr. Weber was devoting
19 his full time to that business and I
20 believe the Court is going to instruct you
21 that if these payments which were made to
22 Mr. Weber, individually, were rebates or
23 cuts off the retail price, off the price
24 of fuel oil in that case that indicates
25 that they were earned by the Weber Oil

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1 Company, by Joseph C. Weber, Incorporated
2 and not by Mr. Weber, individually.

3 You know, there is an old saying in
4 the Bible that no man can serve two
5 masters and I think this case proves it
6 very well. Mr. Weber was working for the
7 Weber Oil Company. His efforts were
8 supposed to be devoted towards assisting
9 that company in its objectives and that
10 is what he was doing when he acquired
11 fuel oil and if you look at the articles
12 of incorporation, Exhibit Number 7, you
13 can see that it is stated here the purposes
14 that the corporation is formed, - this is
15 back in 1949, and one of the purposes is,
16 the first one is to purchase or otherwise
17 acquire, sell and deal and as principal
18 or agent, wholesale or retail fuel oil.

19 There is simply no evidence here that
20 Mr. Weber did anything but act for the
21 Weber Oil Company, his company and there
22 is no evidence that he performed any
23 services for Mobil besides just having
24 his company acquire their fuel.

25 Now, members of the jury, as I said,

1 Mr. Weber, if these witnesses are incorrect,
2 I suggest to you he would be the first to
3 take the stand and explain that the facts
4 were different than some of the evidence
5 shown to be in the record, but even Mr.
6 Raichle is not confident of his position.
7 Even he can't say that these payments
8 were earned by Joseph Weber, individually,
9 acting as a broker, because he says,
10 "Okay, if they were, if they are taxable
11 to the corporation, includable in the
12 corporation's income, then they are de-
13 ductible as compensation". The simple
14 answer to that, members of the jury, is
15 that there is not a bit of evidence in
16 this record that those payments were ever
17 intended to be compensation from Joseph C.
18 Weber, Inc. to Joseph Weber, individually.
19 The payments went from Mobil to Mr. Weber
20 and the compensation which Mr. Weber re-
21 ceived and which was labeled as compensa-
22 tion is stated on this tax return, forty-
23 one thousand for 1963, fifty-two for '64
24 and fifty-two for '65 and if these payments
25 were not compensation, they can't be any-

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1 thing else but dividends.

2 Now, you might ask yourselves why
3 was this arrangement made, why were these
4 payments made by the Mobil Oil Company to
5 Mr. Weber; why was it at his request. The
6 only answer that I can suggest to you was
7 that this arrangement was made simply
8 so that the Weber Oil Company would not
9 have to pay income tax, simply to avoid
10 the corporate income tax upon those pay-
11 ments.

12 Mr. Raichle told you in his opening
13 statement that everybody had paid every
14 dime of tax that they owed, but simply is
15 not the case because the corporation was
16 entitled to this income and the corporation
17 should have paid the corporate income tax
18 and what was done here was simply a device
19 to switch that income to Mr. Weber person-
20 ally so the corporation would not pay tax
21 on it.

22 Now, Mr. Raichle has the burden of
23 proof in this case and I don't know what
24 he is going to say, but he does have the
25 opportunity to address you at the very close.

1 I will not have rebuttal. This will be my
2 first and last chance to address you. I
3 don't know what he is going to say, but
4 I do hope that he will stick to the facts
5 of the case and not talk about the Internal
6 Revenue Service or wave the stipulation
7 around, because whatever you call these
8 payments, they were not paid for any service
9 that Mr. Weber performed for Mobil Oil
10 Company. I would hope that he would stick
11 strictly to the facts and the law and I ask
12 you to listen to him carefully.

13 You know, there are many different
14 people in the Internal Revenue Service of
15 all kinds. Some of them do their job well
16 and some of them don't, but you know the
17 Internal Revenue Service is supposed to
18 enforce the tax laws and those laws weren't
19 made or created by IRS Agents. Those laws
20 were passed by the United States Congress
21 and as jurors, you have the power and the
22 duty to see that those laws are fairly
23 and equitably enforced and that in this
24 particular case, you reach a decision
25 based upon the facts in the case, the

1 evidence which has been presented and the
2 instructions of the Court.

3 Now, Mr. Raichle also may tell you
4 that why wasn't so and so here from the
5 Mobil Company or why weren't certain other
6 witnesses brought in. Well, believe me,
7 as the Court will instruct you, he has the
8 burden of proving this case and Mr. Raichle,
9 on behalf of the plaintiff, can subpoena
10 anybody that he wishes and bring them in,
11 but who did he bring in that really had
12 the knowledge about the facts of the case.
13 Mr. Weber, did he testify, no. The man
14 who testified, - I don't recall his name
15 right now, this afternoon, had left the
16 Mobil Oil Company in 1957 and had no
17 knowledge at all about the facts that took
18 place in this case during the period that
19 we are concerned with in 1963 and 1964 and
20 1965, and Mr. Borenkind who testified about
21 what reasonable compensation would be, had
22 nothing, knew nothing about the actual
23 facts of this case, so I would suggest to
24 you to keep that in mind and listen to the
25 evidence carefully, to listen to the Court's

1 instructions and to decide was Mr. Weber
2 a broker, independent broker, or was he
3 simply acting for his company. Listen to
4 the Court's instructions in those regards
5 and I think that if you listen to Mr.
6 Raichle's argument carefully, listen to
7 the Court's instructions, think about the
8 evidence of the case and bring in a fair
9 and true verdict based upon what has been
10 presented, is that these monies paid were
11 earned by Joseph C. Weber, Incorporated,
12 the Weber Oil Company; that they were not
13 paid or intended to be paid as compensation
14 from the Weber Oil Company to Mr. Weber,
15 but that they were dividends.

16 Thank you very much.

17 THE COURT:

Mr. Raichle. I wanted to give you a
18 chance to get the papers together.

19 MR. RAICHLE:

All right.

20 THE COURT:

So if you are ready, we will continue.

21 MR. RAICHLE:

Your Honor, ladies and gentlemen of
22 the jury; there certainly isn't much in a
23 tax case that lends itself to oratory.
24 Facts and figures and kind of the mundane
25 facts of life don't spark one to be much

1 of a speaker, but injustice does.

2 Now, just because they choose to send
3 up someone with a nice personality and a
4 low key presentation doesn't cloud the
5 fact that there is a very unfair, unworthy
6 attempt on the part of our Government to
7 impose a double tax on a decent law-
8 abiding, hardworking citizen of our commun-
9 ity.

10 Now, just stop and think what is being
11 done here. My friend talks about people
12 who aren't here, evidence that isn't here.
13 It ill becomes him to do so because most
14 of it should have been produced by him.
15 Where are these revenue agents who made
16 this ridiculous charge? Where did he get
17 these few papers he brought here selec-
18 tively? Where are the rest of the records
19 with all the power and resources at his
20 command, what does he do, he brings in a
21 few sheets of paper in the closing elements
22 of the trial and tries to make you think
23 that a temporary allowance is some kind of
24 a dividend. I don't know whether it
25 serves the purpose well to confuse jurors.

1 I have found over more years than I'd like
2 to admit that the aggregate of the intelli-
3 gence of jurors is pretty high and that
4 you don't get anywhere by trying to be
5 smart and trying to twist the facts. It
6 just can't be done. That is why we have
7 twelve, the aggregate of twelve, a pretty
8 decent group of people I have found out
9 to be.

10 Well, let's discuss the facts in
11 this case with no attempt to embellish
12 them and their stark reality and signifi-
13 cance, so let us try to make them under-
14 standable. We can't all be tax experts.
15 I can't make out my own. I have to go
16 to an accountant. Perhaps some of you
17 have to do that too, but that doesn't mean
18 we can't understand some of the fundamentals.

19 Now, what happened here? A man
20 named Weber, a decent, law-abiding,
21 prominent citizen worked hard all his life.
22 It is kind of a modest success story, but
23 what is wrong with that. Aren't things
24 like that to be encouraged today, and he
25 grows up in the oil business and time

1 comes and he goes out for himself. He
2 kind of capitalized on his years of learn-
3 ing and he organizes a company, the Joseph
4 C. Weber, Inc., I think I finally got the
5 name right. Anyway, he had a corporation.
6 Any one of you ladies and your husband
7 might have, or any one of you gentlemen
8 and your wife might have one. Nothing
9 sinister about a corporation. It is the
10 American way of doing business, and he
11 is also a salesman in his own right and
12 he makes this contact with Mobil Oil
13 Company.

14 Now, have in mind that in those early
15 years of the 1950's and into the 1960's
16 the order of things in the oil industry
17 is quite different, was quite different
18 than it is today. The oil companies were
19 engaged in very hot competition. That is,
20 the majors that have been mentioned,
21 Gulf, Exxon, this kind of cony and that
22 kind of cony and Mobil Oil is one of them
23 and they want to sell all the oil they
24 can. We are not concerned here with
25 gasoline. We are concerned with home

1 heating oil. .

2 I think the brand names weren't very
3 important. Everybody wants oil that does
4 the job in their house and it is a question
5 of who is the aggressive salesman that
6 can sell it, who can render the service,
7 who can issue the continuity of deliveries
8 and the responsibility of keeping the
9 tank full when the weather gets cold,
10 and in the course of events, as the evi-
11 dence shows, Mobil got together with Mr.
12 Weber and he was selling the oil on a
13 commission basis. Now, what is wrong with
14 a commission? Nothing. It is the time
15 honored way, a conventional way of paying
16 for selling services, isn't it. It is
17 the incentive to the salesman to sell.

18 Now, he starts to sell on a commission
19 basis and then it occurs to him to organ-
20 ize a corporation which he does and Mobil
21 wants, welcomes his expansion and Mobil
22 says, in effect, to him, "Sell more and
23 more, build up your commissions". The
24 commissions started before his company,
25 now, remember that, and what does he do;

1 he says, "I know what I will do, I will
2 sell it to my own company". Where is a
3 more logical place to sell it, and he
4 tells it to Mobil. There is nothing under
5 the rug and he said, "Pay me the commis-
6 sion on the sales to my own company", and
7 they say, "We will pay you 0065". I am
8 poor at mathematics, "per gallon", and what
9 is the most logical place for him to sell
10 the heating oil; to his own company.
11 No evidence to show his own company wasn't
12 buying from others or wouldn't have bought
13 from others. Am I making this clear, and
14 then he proceeds to sell the gas.

15 Now, there is an old saying among
16 lawyers, - it doesn't reflect very credit-
17 ably upon us, but I often think of it.
18 They say the truth will come out even in
19 affidavits. Now, there was a fellow on
20 the stand yesterday, didn't seem very
21 friendly to me. He is the guy who hadn't, -
22 I don't know where he has been, - he
23 hadn't even heard of O. J. Simpson,
24 remember, and then he says, this and that
25 and the other thing. Finally, - this was

1 amusing. I hope it occurred to you and
2 impressed you as it did me, Mr. Jones
3 says, "Well, what did Mr. Weber, indivi-
4 dually, get paid for", and he says, "For
5 selling the oil, the heating oil to his
6 company". That is the whole case. This
7 is what he did get paid for. He didn't
8 get paid by his company for it. He got
9 paid by Mobil Oil for selling the gasoline
10 or the heating oil.

11 My friend seems to think there is
12 something wrong with selling it to your
13 own company or a company of which you are
14 a president and he talks about who earned
15 the commission. I will get to this bus-
16 iness of trying to translate commissions
17 into dividends and all the other refine-
18 ments of these guys, these gentlemen.
19 Now, if I were a salesman representing
20 some, - selling, - well, let's say it was
21 sporting goods and I happen to be a director
22 in the Buffalo Bills Football team and I
23 say to my company, the company I repre-
24 sent, "Look, I know the football team,
25 Ralph Wilson is a friend of mine, the

1 players are friends of mine, I think I
2 could sell some of these helmets or some
3 of these pads, towels to the football
4 team and I make the sale easier than some-
5 body else who doesn't know them because I
6 can get in the front door". I earned my
7 commission just as well as the other guy
8 does, don't I? Do you go to strangers
9 to sell your product if you have got
10 friends who might buy them? If you have
11 control of a company that might buy them?
12 How absurd, and what does Weber do; he
13 does what he is entitled to do. He sells
14 the oil to his own company and gets a
15 commission for it.

16 Now, you heard his Honor say there
17 is nothing illegal, there is nothing wrong
18 with that. You heard the, - you haven't
19 heard a claim that there is anything
20 wrong with that, and who are the parties
21 to the transaction; the fellow with the
22 whiskers, the out and out present ubiqui-
23 tous, meddlesome IRS, no; Mobil Oil and
24 Mr. Weber.

25 I hope the time hasn't come that

1 whenever we make a business transaction
2 we have to look over our shoulder and see
3 if there is some guys from the, from
4 gentlemen from the IRS that is going to
5 call us up. Is there a person on this
6 jury who heard the word "dividend" men-
7 tioned until my friend sums up and says
8 "Oh, this was a dividend"? I don't know
9 what we are coming to. Did anybody say,
10 and you know, an old saying, you know that
11 consistency is a hobgoblin of small
12 minds, - maybe mine is small, but I think
13 there should be some consistency.

14 He says it is a matter of intention.
15 You can't call it compensation unless it
16 was intended to be compensation. In the
17 next breath, he says it was a dividend,
18 this money a dividend, for heaven's sake.
19 Whoever said it was a dividend except some
20 revenue agents who hadn't had the courage
21 to come here. Where in the world are they
22 and why aren't they here? It is an old
23 bromide, you know, of some lawyers, and
24 maybe I am slipping a bit too, but my
25 friend says, "Why isn't this guy here,

1 why isn't that one here, why doesn't Mr.
2 Weber testify". All right. Why aren't
3 the fellows who made this ridiculous
4 charge here to explain to you. Sure, they
5 send up some lawyer to try to charm you
6 into saying "Well, it will help the
7 Government in these hardup days to take
8 money from Weber and give it to the
9 Treasury", although he has paid all of
10 his taxes. What kind of a performance is
11 that? If they could do it to him, I mean
12 Mr. Weber, they can do it to you tomorrow.
13 Don't think they can't. They will find
14 a way to call something other than what
15 it is.

16 Now then, Mr. Weber, getting back to
17 the continuity of things, if I may, Mr.
18 Weber arranges a perfectly legal, legi-
19 timate, praiseworthy arrangement to sell
20 Mobil's products for a commission. Now,
21 never forget, please, - I know it is a
22 difficult, it is difficult in a complicated
23 little case like this not to have all the
24 facts. My friend keeps using the word
25 "earnings". What did he do to earn the

1 commission. That really isn't here, but
2 suppose it is, and please remember this,
3 that witness yesterday was one of the worst
4 witnesses I ever saw and I have seen a
5 lot of bad ones. He didn't know, and I
6 don't like to be slang in my speech,
7 nothin' from nothin'. His memory, -
8 couldn't remember this and couldn't remember
9 that, but they asked him what did Weber do
10 to earn the commission and the fellow
11 says "He sold our oil, Mobil Oil to the
12 Weber Oil Company, Inc.". If there is
13 any doubt about that, the reporter will
14 read it to you and then I don't know
15 whether you noticed what I thought was an
16 interesting, - from my point of view,
17 amusing thing. My friend says, "Oh, that's
18 all". That isn't what he hoped he would
19 say. That is the whole case. He sold
20 Mobil products to Weber Oil for a
21 commission.

22 Now then, what is the next thing
23 happens in our chronology here. The
24 Weber Oil Company continues. This arrange-
25 ment is made. It is a little indefinite

1 in the testimony and in the nature of things
2 it would be. Who remembers conversations
3 in detail which happened, oh, say, what
4 is it, fifteen, eighteen years ago.
5 Weber's company was formed in '49. This
6 contract, if I am not boring you, if you
7 haven't already rightly decided our way,
8 this is a contract dated back in '58
9 between Mr. Weber's company and the
10 Mobil Oil Company and there is nothing
11 said here except that the company will
12 buy Mobil, will sell some oil and that
13 arrangement continues through the years,
14 through many years and isn't criticized
15 until '63, '64 and '65 and then all of a
16 sudden, they want to call a commission a
17 dividend. I would like to call a lot of
18 things that affect me by some names,
19 unscriptive of what they are, but at
20 any rate, they bring in a witness here
21 this morning, and I am not a name caller?
22 Believe me, I am not. I think it is
23 cowardly of lawyers with the anonymity
24 and the privilege that goes to them in
25 court to call people liars and other names,

1 I am not a name caller, but I do have a
2 duty to call attention to matters and
3 things affecting the credibility of
4 witnesses. Now, what they put that fellow
5 on this morning for, I will never know.

6 I don't accuse them of chicanery,
7 but it seems very unfair to me on their
8 part to try to create the impression that
9 the commission paid to Mr. Weber was some-
10 thing other than a commission.

11 You remember they called it a tempor-
12 ary allowance and we start to ask him what
13 he means by temporary. He says "Less
14 than forever". Well, that is a pretty
15 flip answer and I thought a little unworthy
16 because of the circumstances, and he tried
17 to translate. Now, this, - as I remember,
18 he was rather brave about it, but I want
19 to make it clear that if any of you are
20 confused by it, it is only because of my
21 ineptitude in trying to make it clear.
22 He is trying to translate a commission to
23 Mr. Weber into something else, a dividend,
24 a happy word imported here at the end of
25 the case. He must have gone out and found

1 the market was up today and that put it
2 in his mind, and you remember this fellow
3 quarreled with me or sought to quarrel
4 with me and he couldn't in the face of
5 the documents that he was making some
6 temporary, or Mobil was making some
7 temporary allowance. He tried to change
8 this word here, "temporary allowance", and
9 say that is what it really was instead of
10 a commission..

11 Then it turns out right out of his
12 own mouth that all of that temporary allow-
13 ance is is when a customer is beset with
14 some cutthroat competition in the oil
15 business with some guy across the street
16 who is cutting prices that the purpose
17 of the temporary allowance, he can cut
18 the price to make an allowance and then
19 it turns out he is trying to say that that
20 is what these payments to Weber were that
21 have been going on for years. Then it
22 turns out that the commission or the
23 allowance is 0025, - 0025. The undisputed
24 evidence in the case was that Mr. Weber's
25 compensation was 0065 and then he says he

1 never heard of a commission. You remember
2 that. No, no commissions. On this 1950
3 contract, it says here "Seller", - that
4 is Mobil Oil, "will allow buyer". That
5 is the Weber Company, "a commission of
6 one quarter". There is the word right in
7 it. Couldn't be bigger. Now, one quarter
8 cent per gallon on all new Mobilheat and
9 such fuel tankcar accounts and so forth
10 which the buyer, the corporation secures
11 for the seller. That is a different
12 commission.

13 See, he was trying to palm it off on
14 you people as if that is the one they
15 call a temporary allowance. Do I confuse
16 you on that, or do you understand? I
17 think you do.

18 Now then, I don't care whether you
19 call it an allowance. It is a fee, another
20 word. It sends shivers up their back
21 whenever I call it a commission. A fee,
22 a commission. I am not above calling it
23 compensation, payment. I don't care, as
24 long as I get it, and what did he get it
25 for, for what their own witness said he

1 got it for, selling the oil, a million
2 dollars worth of it each year, approximate
3 figures, to the oil company.

4 Now then, we get to something else.
5 I hope I haven't been too aggressive to be
6 offensive to anybody. They try a case in
7 a little lower key than I do because they
8 have nothing to be incensed about and I
9 do. When you are getting ready to try
10 a case as lawyers, you can see that there
11 are certain facts that ought not be the
12 subject of dispute and extended argument
13 and extensive testimony and voluminous
14 documents so lawyers agree, stipulate is
15 a fancy word. "Stipulate" means an
16 agreement. I always thought, for more
17 years than I like to admit, that when I
18 made an agreement with a brother lawyer,
19 especially one representing my Government,
20 that the agreement had integrity and would
21 not be repudiated and that, as the law
22 says, and justly so, that it takes the
23 place of proof, that it would not be
24 attempted to be repudiated.

25 Now, let me read Exhibit 1 in part.

1 This is going to answer the questions
2 which the Judge is going to submit to you.
3 Let me see if I can make it clear. It
4 starts, - this is signed by the Government,
5 so let's not be cynical in these days
6 when the City of New York seems to be
7 about ready to repudiate its obligation,
8 that the Government of the United States,
9 through its lawyers, can repudiate an
10 agreement. Now, listen to this, please.
11 Take it with you in the jury room and see
12 if I am not right about this, and if I am
13 wrong, tell me by your verdict. "It is
14 hereby stipulated by and between the
15 parties", - that is the Weber, Incorporated,
16 the plaintiff company. It was Weber,
17 Incorporated that was stuck for the extra
18 illegal tax, "and the United States of
19 America". With whom would you rather have
20 a contract. "It is hereby stipulated by
21 and between the parties through their
22 respective counsel that for the purpose
23 of this action", that means this case,
24 "the following facts herein set forth are
25 to be taken as true and correct in the same

1 manner as if they were duly proved,
2 provided, however, that either party may
3 introduce other and further evidence not
4 inconsistent with the facts herein stipu-
5 lated".

6 Well, they stipulate the incorpora-
7 tion of Weber, Incorporated and the fact
8 that the defendant is the United States
9 of America and importantly, that both
10 the corporation and Weber duly filed their
11 tax returns as indeed they did, showing
12 every dollar received by way of commissions
13 or otherwise, and then they go to the
14 facts of the case. "The plaintiff", they
15 say, the corporation was, - that is
16 Weber, Incorporated, "and is in the
17 business of acquiring and selling fuel
18 oil to customers in the area of Erie and
19 Niagara Counties." Now they go on and
20 here comes the decisive part of it. "The
21 Mobil Oil Company paid a commission
22 directly to Joseph C. Weber, individually,
23 on fuel purchased by Joseph C. Weber,
24 Inc., doing business as Weber Oil Company
25 from Mobil Oil Company".

1 Whose commissions were they? They
2 were Weber's according to the stipulation.
3 Now they sit around there and apparently
4 dream up something, "Oh, we will go up to
5 Buffalo. We will find some jurors who
6 won't understand this and we will call it
7 a dividend".

8 How can that be done, and then it
9 goes on, "During the years in suit, the
10 Mobil Oil Company paid directly to
11 Joseph C. Weber, individually, the follow-
12 ing amounts with respect to the fuel oil
13 sold by the plaintiff", '63, '64, '65,
14 so many dollars. Again, the commissions
15 paid by Mobil Oil Company were not paid
16 to the plaintiff nor reported in the
17 Federal Income Tax returns of the plaintiff.
18 The plaintiff is the corporation, - as I
19 keep saying, nor should they be, but were
20 reported on the income tax returns of
21 Joseph C. Weber, individually, and the
22 tax thereon was paid by him. The funny
23 part of it is that if he had done it their
24 way and had the money paid to him as
25 compensation, additional compensation, he

1 would have paid less tax and I don't mean
2 to criticize in that sense your tax man,
3 Mr. Weber.

4 Isn't this keyed to escape taxes, it
5 is a method of doing business honestly,
6 legitimate, constructive business. I know
7 I am talking too long, but I feel strongly
8 about this. You would, if you were there,
9 and I think maybe by this time maybe you
10 do. You certainly should.

11 Now then, they go on to stipulate the
12 corporation paid all its taxes, he paid
13 all his taxes. I say all those taxes
14 as revealed by the returns and who would
15 have thought, who would have thought if
16 they had been in Mr. Weber's place that
17 years later, the '63, '64 and '65, - some
18 lawyer would be standing before a jury
19 claiming "oh, he didn't get a commission,
20 he got a dividend". He didn't get a
21 commission from the oil company for whom
22 he was selling oil. He got a dividend
23 from his company who was buying oil. I
24 want to tell you you better think about
25 that a little bit and its implications.

1 Now then, there is much more that
2 could be said. If that stipulation doesn't
3 have integrity and isn't to be given effect
4 and if the testimony of a nice man like
5 Mr. Berger, our witness, - he was very
6 brief, - sometimes the brief witnesses are
7 the best. They go to the point. Is there
8 any question in anybody's mind raised by
9 these confused, forgetful, to be charitable
10 about it, fellows he dug up from Mobil,
11 whatever their names were, Goodwill. That
12 was a happy name for a guy that was full
13 of ill will as he seemed to me.

14 If your own pocketbook was affected
15 by what those two fellows have to say, for-
16 getting the stipulation, - not forgetting,
17 but putting aside for a moment, and don't
18 you forget if your own pocketbook was
19 involved and two people came to say what
20 their two witnesses did, Mr. Goodwill and
21 Mr. , - what is the other guy's name, the
22 fellow that was here this morning,
23 Spitzinger or something, and Mr. Berger
24 came to say the contrary. Which would
25 you want to have to believe?

1 Now, what does Mr. Berger say? Away
2 back in the early 50's, he and his then
3 senior, Mr. Capolla or whatever his name
4 was went to see, - Mr. Berger went to see
5 Mr. Weber and a part of the customer
6 relations asked him if he was happy with
7 his commissions. Now, do you think that
8 Mr. Berger whom I never saw in my life
9 before this morning would put his hand on
10 the Bible and swear to something that
11 isn't true for the sake of Mr. Weber
12 escaping a double tax? If you do, you
13 are more cynical than I am. What motive
14 would the man have, a disinterested, -
15 here at some inconvenience only because
16 he is required to be. I sent for him
17 after I heard that nonsense yesterday
18 and there he is and he tells you the
19 ultimate. If we didn't have the stipula-
20 tion and the agreement, what more would
21 you ask to prove that Mobil was paying
22 commissions for services rendered?

23 Now, I always think the devil is
24 kind of sick when he starts to quote the
25 Bible. My friend says you can't serve

1 two masters. He doesn't get it quite
2 right. You can't serve two masters who
3 have a conflict in interest, but does
4 that mean that a man can't have two jobs;
5 does that mean that a man can't have two
6 undertakings? I think he ought to review
7 that passage when he is not reading other
8 passages from the Good Book, you know,
9 where it says, "Either you love the one
10 too much" and so on and so forth and for
11 what it is worth, I am familiar with it
12 too, but I don't use it. It isn't
13 apropos. It has nothing to do with the
14 case, but all of us, every lawyer who is
15 a trial lawyer has had that experience,
16 has had a desperate case now and then and
17 when you don't have the facts, you try to
18 weasel around with something else.

19 Now, Mr. Jones, - I never saw him
20 before. This isn't a personal controversy
21 between him and me. We might meet again
22 sometime and maybe he will have the strong
23 case and I will have the weak one, but
24 that isn't the test. You took an oath
25 and I know you will be faithful to it.

1 Maybe I have talked a little bit long, but
2 jury duty is an important thing, important
3 to every case. Every case involves the
4 fidelity and conscience and intelligence
5 of jurors and I know you will measure up.

6 The Court is going to submit to you
7 not a question of dollars and cents and
8 how much should it be, but he is going to
9 submit to you the question and I want to
10 be very clear about this. Please follow
11 me on this. The first question you are
12 going to be asked to answer is, "Were
13 the monies paid by Mobil Oil Company to
14 Mr. Joseph Weber during 1963, 1964 and
15 1965 earned by Weber, Inc.", - that is the
16 Weber Oil Company, "or by Joseph C. Weber,
17 individually". Now, there is only one
18 answer to that. They were owned by him,
19 they were earned by him and your answer
20 is "Joseph C. Weber". Don't get confused
21 about this now. Their own witness said
22 he got the money for selling the oil to
23 the Weber Oil Company. How then can you
24 say the Weber Oil Company earned it. The
25 fellow who sold it got the commission.

1 The fellow who sold it earned it and that
2 is Weber, individually. Now, please be
3 careful. Don't make a mistake. You know
4 sometimes we do in the polling booth when
5 we get in there. The first question is
6 did Mr. Weber earn the commission. Look,
7 and you don't need anymore arguments.
8 Do you think the Mobil Oil Company is an
9 eleemosynary institution, that it gives
10 money to people who don't earn it? They
11 thought Weber earned it. Weber thought
12 he earned it and who says he didn't, some
13 guy who comes around twelve years later and
14 says, "No, it is a dividend". That is a
15 new one.

16 I want to ask you who earned it,
17 Joseph C. Weber, as we say on the second
18 line of the ballot there. Got it? Now
19 then, the next one "If the answer to
20 question Number 1 is Joseph C. Weber", I
21 read this only because it is part of the
22 case. I know you won't reach it. I won't
23 answer the first one that the corporation
24 Weber Oil Company earned it, and then this
25 question "Were the monies paid intended
by Joseph Weber, Inc., to be compensation

1 or dividends". Dividends, to Joseph C.
2 Weber, as an individual at the time these
3 payments were received by Joseph C. Weber.
4 If there is a man or a woman on this jury
5 who could put down the word "dividends",
6 and answer that, I want to meet him.
7 Nobody said so except a lawyer twelve
8 years after the event. Why, you couldn't
9 do that in good conscience, it seems to
10 me. Now, don't think I am presumptuous.
11 You have the power, but you have the
12 conscience too. Compensation, of course.

13 Now, we got another one here to put
14 more sticks in your way. If the answer
15 to Question Number 2 is "compensation"
16 and that is what the answer should be, if
17 you get to it, then answer this question,
18 "Was the compensation reasonable".

19 Why, I had Mr. Borenkind, counsel
20 for all the organizations, he knows more
21 oil men than I do lawyers, knows what they
22 pay, said it was reasonable, would have
23 been reasonable, put it that way. Did
24 they offer any evidence that it wasn't
25 reasonable? They had a lot of nerve to

1 come into court with a record like this
2 and try to weasel your way through. I
3 used to do it when I was younger, but I
4 wouldn't have the nerve today. Was it
5 reasonable? Don't you think for a minute
6 that this IRS, this great octopus that
7 seems to be enveloping all of us, could
8 press a button somewhere and tell you
9 what every oil executive big and little
10 got and if they had some names for anybody
11 doing the same volume of business got
12 less, that they would be in here with a
13 record showing it. My friend talks about
14 what isn't here, but that is something
15 that isn't here.

16 Well, let's just once more, - the
17 only thing that can keep me here is con-
18 fusion. Answer to the first question is
19 Joseph C. Weber, the man who got the money,
20 the man who Mobil thought was entitled to
21 it, the man who thought he was entitled
22 to it and the man who was entitled to it
23 for the services he rendered.

24 The next one, compensation or dividend.
25 My God, - pardon me, how can anybody say

1 a dividend. That is a new one, and then
2 reasonable.

3 Well, ladies and gentlemen, I am
4 through. I have been bent a little, and
5 if I said anything or done anything to
6 offend anybody, if I have been too aggres-
7 sive, it is only because I feel strongly.
8 Take the case and bring into it your
9 good judgment and be quite faithful, very
10 faithful to your oath and answer these
11 questions as your conscience dictates and
12 as your good sense requires. Thank you
13 very much.

14 THE COURT:

15 Ladies and gentlemen, we will take
16 about a ten minute recess and, Mr. White,
17 could you gather the exhibits together,
18 please. I would like to take a look at
19 the exhibits.

20 So you know what the plan is after
21 the recess, we will come back and I will
22 charge you on the law which applies to
23 this case and then because I know that
24 some of you jurors have traveled some
25 distance, I think that what we will do
then is we will be in recess until

*

*

*

1 PROCEEDINGS:

November 5, 1975, 4:00 p.m.

2 APPEARANCES:

As before noted.

3 (Jury present.)

4
5 CHARGE OF THE COURT

6
7 THE COURT:

Ladies and gentleman, at this time,
it is my job to try to explain to you, to
the best of my ability, the law which
applies to this case and try to define for
you what you are supposed to do when you
get to the jury room.

13 First of all, as you know, the facts
14 in any case must be decided upon the testi-
15 mony of the witnesses and upon the exhibits
16 which have been introduced into evidence.
17 I know that during this trial you paid
18 very close heed to the testimony, to the
19 direct and cross examination and also to
20 the arguments of the lawyers and, of course,
21 that is as it should be because what Mr.
22 Jones and Mr. Raichle had to say about the
23 testimony and how it relates to their
24 side of the case is important, but certainly
25 you do know also that what lawyers say

1 about the facts and how the facts relate
2 to the final conclusions you should draw
3 is argument and if you find after you
4 listen to all of that, if the statements,
5 and I do not say that I find here that
6 this was at all the case here because
7 I think that both sides summed up very
8 carefully and tried to give you the issues
9 as they saw them, as carefully as they
10 could, but if you find that something the
11 lawyers talked about is not supported by
12 the evidence, by the testimony or the
13 exhibits in the case, then, of course, you
14 should rely upon the testimony and the
15 exhibits.

16 When you get to the jury room, before
17 you come to a conclusion about any of the
18 questions that are put to you, you must
19 arrive at the answer by a unanimous verdict.
20 That is, all the jurors concurring. You
21 should, of course, deliberate. That is,
22 carefully consider the arguments, the
23 reasoned, practical, well thought out
24 arguments of your fellow jurors and at the
25 same time, you should give to your fellow

1 jurors your considered view of the testi-
2 mony, the evidence in the case and how
3 it relates to the charge.

4 As you will see from the questions
5 in the case here, that nothing is said
6 about dollars or money and the reason for
7 that is because if you answer the questions
8 put to you or, as I will explain, question
9 or questions, then as far as the amount
10 due one way or another will be subject to
11 compensation which can be worked out by
12 the Court with the cooperation of the
13 attorneys.

14 This has not been a long trial, so
15 I will not again thrash over the testimony
16 in the case. You have heard the arguments
17 of both sides and I do not think that I
18 need to say anything more about the con-
19 tentions or the arguments one side or the
20 other.

21 In any case and in this case in your
22 consideration of the evidence, you should
23 keep in mind that you are not limited
24 solely to the testimony, to the bald
25 statements of the witnesses. You may draw

1 from the evidence in the case from facts
2 which you find have been proven such
3 reasonable inferences as seem justified
4 in light of your own experiences in life.
5 However, your verdict is to be based on
6 the evidence itself and is not to be based
7 upon guess, surmise or conjecture. On
8 the one hand, you should dismiss any
9 sympathy for a private individual and on
10 the other, you should not give any special
11 consideration to the fact that the defend-
12 ant here is the United States Government.
13 Both sides are equal before the law and
14 neither side should be given any special
15 consideration.

16 In order to make up your mind about
17 the evidence in the case, you are the
18 judge of the credibility to be afforded
19 to the witnesses who have testified here
20 and as to how their testimony stacks up
21 with other witnesses and how it jibes
22 with the exhibits which have been intro-
23 duced into evidence. You should know that
24 when this case is given to you in a formal
25 fashion tomorrow morning the exhibits

1 which have been received in evidence will
2 be given to you for your use, for your
3 perusal in the jury room. There are some
4 exhibits which have been perhaps referred
5 to, but were not received in evidence and
6 as to those, if they are not received,
7 you may consider, - if there was any
8 testimony about them, you may consider the
9 testimony about these exhibits, but if they
10 are not received in evidence, then you
11 will not guess or speculate about what
12 other information is contained on these
13 exhibits which are not before you.

14 In your consideration of the credi-
15 bility of the witnesses, you should keep
16 some of the following factors in mind:
17 You should carefully scrutinize the testi-
18 mony which they have given, the circum-
19 stances under which the witness testified,
20 every matter in evidence which tends to
21 either support or to contradict their
22 testimony. You should consider the
23 witness' intelligence, motive, state of
24 mind, demeanor and manner while on the
25 stand. You should consider any relation-

1 ship which the witness may bear to either
2 side of the case, the manner in which the
3 witness might be affected by the verdict
4 and the extent to which, if at all, the
5 witness is either supported or contra-
6 dicted by other evidence. The mere fact
7 that the testimony of a witness is in-
8 consistent or that there are discrepancies
9 and such in his testimony does not neces-
10 sarily mean that you must reject the
11 witness' credibility. You must determine
12 whether the inconsistency or discrepancy
13 is the result of falsification or whether,
14 on the other hand, it is the result of
15 miscalculation or inaccurate observation.

16 You are not to decide the case,
17 certainly, because of the number of
18 witnesses on one side or the other. It is
19 the quality of the testimony which is
20 controlling.

21 Generally speaking, there are two
22 types of evidence from which you may find
23 the truth as to the facts in the case.
24 One is direct evidence. That is the
25 testimony of an eye witness or of a person

1 who reports to you a particular conversa-
2 tion.

3 The other is circumstantial evidence.
4 That is proof of a chain of circumstances
5 pointing to the existence or non-existence
6 of certain facts. The law does not make
7 any difference or distinction between the
8 two types of evidence, but requires that
9 you find the facts in accordance with
10 the preponderance of all the evidence in
11 the case.

12 In this case, Mr. Borenkind was
13 called and we call him an expert witness.
14 In dealing with a person such as this,
15 you should keep in mind, generally, witnesses
16 who, by their experience or education,
17 have become expert in some art, science,
18 profession or calling, may state their
19 opinions about relevant and material
20 matters and they also may state their
21 reasons for their opinion. You should, in
22 considering this kind of testimony, give
23 it such weight as you think it deserves.
24 You should consider the background, the
25 experience of the particular witness, his

1 opportunity to learn the facts, the
2 studies he has made, whether they are
3 great or small and whether or not, in
4 giving his view, he had access to all of
5 the pertinent documents, data, information
6 so that whatever opinion he gave here is
7 supported in good fashion by the evidence
8 in the case.

9 Sometimes I have ordered certain
10 evidence stricken and as you certainly
11 know, I have ruled one way or another
12 on certain questions which have been
13 answered here. I certainly did not mean
14 to indicate favoritism one way or another,
15 but it seemed to me as to a particular
16 question under the rules, it either
17 should have been answered or it should not
18 have been answered and if I ordered that
19 it should not have been answered and it
20 was, then you should consider that
21 material stricken.

22 In making up your mind about this
23 case, as I have explained to you again
24 and again, it is important that you con-
25 sider all the evidence in the case and not

1 focus your attention upon one particular
2 part of it. You should try to keep in
3 mind everything here before you.

4 In that regard, there has been a
5 good deal of discussion about the stipula-
6 tion which is in evidence here. You
7 certainly are entitled to consider the
8 stipulation, but in addition to that, you
9 may, in making up your mind about the
10 pertinent issues in this case, determine
11 from all the evidence, the stipulation,
12 plus all the other exhibits and testimony,
13 what your appropriate answers are to the
14 questions posed to you.

15 This case is a civil suit brought
16 by the Weber Corporation in which they
17 seek a refund of taxes paid the United
18 States. It does not involve any criminal
19 violation or criminal prosecution or
20 criminal allegations of any kind. All of
21 the issues in this case are purely civil
22 in nature.

23 We have, in this case, a number of
24 different entities. We have the Mobil
25 Oil Company. We have Joseph C. Weber,

1 Incorporated. I think it would probably
2 be simpler if I simply refer to the
3 corporation as the Weber Oil Company, and
4 Mr. Joseph C. Weber.

5 There is no question that the Weber
6 Oil Company filed timely income tax returns
7 for the years 1963, 1964 and 1965. These
8 tax returns did not include, as income,
9 certain payments or commissions, as they
10 are referred to in the stipulation
11 physically made by the Mobil Oil Company
12 to Mr. Joseph Weber. The Commissioner
13 of Internal Revenue asserted that these
14 payments were includable in the income of
15 Weber Oil Company and assessed a defici-
16 ency in income taxes against the Weber
17 Oil Company. The Weber Oil Company denied
18 that these payments were includable in
19 its taxable income, paid the assessed
20 deficiency and filed claims for refund
21 for each year.

22 As I have explained to you before,
23 the corporation had the alternative of
24 either following this route to bring them
25 into this court or by another route going

1 to the Tax Court and they have followed
2 this route and they have the absolute right
3 to be here and have their matter argued
4 before the Court and before your body
5 here this week.

6 The Commissioner of Internal Revenue
7 denied the claims for refund and the
8 plaintiff Weber Oil Company filed the
9 suit against the United States. This case
10 concerned a question of whether certain
11 monies and we have heard the argument and
12 it has been referred to as commissions
13 or payments from the Mobil Oil Corporation
14 to Mr. Joseph Weber should be included
15 in the income of Weber Oil Company. Weber,
16 Oil Company, the plaintiff here, contends
17 first that it did not earn the amounts in
18 question, but rather the amounts were
19 earned by Mr. Joseph Weber, acting indi-
20 vidually and not on behalf of the Weber
21 Oil Company and, therefore, the amounts
22 were not includable in the income of Weber
23 Oil Company.

24 The second argument is that if the
25 amounts in question were determined to be

1 includable in the Weber Oil Company's
2 income, that corporation is entitled to
3 a deduction in that the payments were
4 deductible from the corporate income as
5 additional salary paid to the Weber Oil
6 Company's chief officer and stockholder,
7 Joseph Weber.

8 The defendant United States contends
9 that the amounts in question were earned
10 by Joseph C. Weber as an individual on
11 behalf of the Weber Oil Company and that
12 these amounts are, therefore, includable
13 in the income of the Weber Oil Company.

14 In this case, in reaching a deter-
15 mination of the issues involved, the
16 burden of proof here is placed upon the
17 plaintiff taxpayer. Under our system of
18 taxation, the Commissioner of Internal
19 Revenue is charged with the duty and is
20 given the power to determine the tax
21 liability of a taxpayer. In this case,
22 the Weber Oil Company has the burden of
23 proving by a preponderance of the evidence
24 that the Commissioner's determination was
25 not correct.

1 The words "preponderance of the
2 evidence" means that if the corporation
3 having the burden of proof in the case,
4 the Weber Oil Company, is to prevail, it
5 must satisfy you from all the evidence in
6 the case that something has proved to be
7 more likely so than not. In other words,
8 a "preponderance of the evidence" means
9 such evidence as when considered and
10 compared to the opposing evidence has more
11 convincing force and produces in your mind
12 a belief that what the Weber Oil Company
13 seeks to prove is more likely true than
14 not true.

15 Some of you ladies and gentlemen
16 have sat on a criminal case or two and
17 you should certainly keep in mind that
18 the differences in burden of proof are
19 much different in this case. They are
20 much greater on the Government in a
21 criminal case where we say "beyond a
22 reasonable doubt". Here it is just a
23 little bit more so than not.

24 MR. JONES:

25 Excuse me, your Honor. I think you
 meant to say the burden in this case is

1 on the plaintiff.

2 THE COURT:

3 Excuse me. The burden is on the
4 plaintiff here. It is on the Weber Oil
5 Company.

6 The first question for you to decide
7 is whether the amounts physically paid
8 by the Mobil Oil Company to Joseph Weber
9 were earned by Mr. Weber as a result of
10 services rendered by him to Mobil Oil or
11 whether these payments were earned by the
12 Weber Oil Company. If these payments were
13 made in return for services rendered by
14 Joseph Weber in his individual capacity
15 to Mobil Oil, then these payments were
16 earned by Joseph Weber and not taxable as
17 income to the Weber Oil Company. On the
18 other hand, if the payments or commissions
19 or money represented in substance a rebate
20 or discount on the oil purchases made by
21 Weber Oil Company from Mobil Oil, then
22 these amounts were earned by Weber Oil
23 Company and were taxable as income to it.

24 You should ask yourself whether the
25 payments from Mobil Oil were made to
Joseph Weber in return for services which

1 were separate and distinct from the
2 services he performed in the operation of
3 Weber Oil Company. Accordingly, if
4 Joseph Weber performed services for Mobil
5 Oil as an independent broker apart from
6 the services he performed for Weber Oil
7 Company in return for these payments, this
8 would indicate that he earned these pay-
9 ments in his individual capacity.

10 If, however, these payments were made
11 to Joseph Weber, because of his position
12 and duties as majority stockholder and
13 president of Weber Oil Company, then this
14 would indicate that Weber Oil Company
15 earned these payments through its activi-
16 ties rather than any broker activities of
17 Mr. Weber.

18 In considering whether or not these
19 payments were earned by Joseph Weber or
20 by Weber Oil Company, you should consider
21 what Mr. Weber's duties and responsibilities
22 and activities were with regard to Weber
23 Oil Company. You may consider in this
24 regard what corporate positions Mr. Weber
25 held and whether or not he was a person

1 who controlled the activities of Weber
2 Oil Company in its dealings with Mobil
3 Oil.

4 Income, according to tax law, is
5 taxable to the person or corporation who
6 earns it. Therefore, if a person or
7 corporation earned the income, it would be
8 taxed on that income even though it did
9 not actually receive the monies.

10 In this case, therefore, the fact
11 that Weber Oil Company did not actually
12 receive the payments in question from
13 Mobil Oil Company, does not, in and of
14 itself mean that those payments were not
15 taxable income to the Weber Oil Company.
16 A corporation such as Weber Oil Company
17 is, in law, a person, but, of course, it
18 cannot act otherwise and through its
19 directors or officers or employees or
20 other agents. Every act of every director
21 or officer or employee or agent in behalf
22 of or in the name of a corporation done
23 within the scope of authority is, in law,
24 the act of the corporation itself.

25 We should keep in mind that an officer

1 or director of a corporation is required
2 to act in the best interest of the corpora-
3 tion.

4 If you decide in this case that the
5 payments in question were earned by Weber
6 Oil Company, then you will go on to answer
7 the second question. That is, whether or
8 not these payments were compensation
9 payments in substance from Weber Oil
10 Company to Joseph Weber at the time they
11 were received by Joseph Weber.

12 In order for payments from a corpora-
13 tion to an individual to be considered
14 compensation, it must first be decided
15 whether or not the payments were intended
16 to be compensation at the time they were
17 made and when I say "compensation", I
18 mean payment for services rendered, and
19 in this case, that would be a question,
20 whether or not there were services rendered
21 by Joseph Weber as an individual to the
22 Weber Oil Company. If, at the time, the
23 payments were not intended to be compensa-
24 tion at the time made, then this should
25 indicate that the payments were not com-
pensation from Weber Oil Company and were,

1 in fact, dividends paid by it.

2 "Dividends" means the distribution
3 of property or money made by a corpora-
4 tion to its stockholders.

5 In this case, if you find that the
6 payments were intended to be compensation
7 at the time they were paid, then this
8 should indicate that they were compensa-
9 tion payments and not dividend payments.
10 In determining whether or not the pay-
11 ments were intended to be compensation
12 from Weber Oil at the time they were
13 received by Joseph Weber, you may consider,
14 among other things, how these payments
15 were treated on the books, records and
16 corporate returns of Mobil Oil Company
17 and Weber Oil Company.

18 In speaking here, I have not referred
19 right now to the questions which I had
20 explained to you earlier. I will briefly
21 discuss them again at this time.

22 The first question you should answer,
23 "Were the monies paid by Mobil Oil Company
24 to Mr. Joseph Weber during 1963, 1964 and
25 1965 earned by Joseph C. Weber, Inc.", -

1 that is the Weber Oil Company, "or by
2 Joseph C. Weber, individually". In answer-
3 ing that question, you should keep in mind
4 the instructions which I have given to you
5 during my charge. You will mark one as
6 Joseph C. Weber, Inc. I mean you will
7 mark either one or the other. That is,
8 either the Weber Oil Company or Joseph C.
9 Weber. You should know that if you mark
10 Joseph C. Weber, that means you are voting
11 for the plaintiff and you will not then
12 proceed to any of the other questions.

13 If the answer to question 1 is the
14 Weber Oil Company, then answer this ques-
15 tion, "Were the monies paid intended by
16 Joseph C. Weber, Inc. to be compensation
17 or dividends to Joseph C. Weber as an
18 individual at the time these payments were
19 received by Joseph C. Weber as an indivi-
20 dual", and again, you will put down, if
21 you reach the second question, you will
22 mark compensation or dividends. Again,
23 you should know that if you answer the
24 second question by marking dividend that
25 means that there will be a verdict for

1 the defendant and that will end your
2 consideration of the question.

3 If you answer that question "compensa-
4 tion", then you proceed to the third
5 question and if your answer to Question 2
6 is "compensation", then answer this
7 question, "Was the compensation reasonable".

8 In answering this question, you will not
9 only keep in mind the main testimony, and
10 you may find something else in the case,
11 but the main testimony about the reason-
12 ableness of compensation was that offered
13 by Mr. Borenkind and if you find that his
14 assessment here is valid, if you reach
15 this question and you find that the com-
16 pensation under all the circumstances
17 favors Mr. Weber, was reasonable, then you
18 should answer the question "yes". If you
19 find it is not reasonable, then you answer
20 "no".

21 As I have explained to you before,
22 ladies and gentlemen, your verdict must
23 be, and your answers to either questions
24 or question should be, must be by unanimous
25 vote. It usually helps in your considera-

1 tion if, when you begin your deliberation,
2 you elect a foreman who will be the person
3 who will preside over your deliberation
4 and when you come into court would respond
5 by handing up the verdict to the clerk
6 or if you have a question. If you have a
7 question, you will simply write it out.
8 Do not try to contact anyone else about
9 this case in any other fashion except by
10 a written note given to the Marshal.

11 You are going to take a break over
12 the evening hour and then return tomorrow
13 and, of course, all the jurors including
14 the alternate juror should report in the
15 morning a few minutes before 10:00 and
16 when you are all assembled, then I will
17 have the Marshal have you come up and the
18 Marshals will be sworn in a formal manner
19 and the exhibits will be given to you and
20 the case will then be also formally given
21 to you for your deliberation at that time.

22 You should not certainly, and I know
23 that you recall my former instruction, but
24 you should not discuss this case with any-
25 one over the evening hours. You should

1 certainly not do any reading up on any
2 of the terms that we have talked about
3 during this afternoon. If you should ride
4 home with one of your fellow jurors, of
5 course, you should not talk about the case
6 because your deliberation should only be
7 as a group in the jury room after it is
8 formally submitted to you.

9 On the way in and on the way out,
10 I know we certainly have to be and will be
11 pleasant to all the litigants and I know
12 you will do that here, but if you have
13 any question at all about anything, do
14 not certainly address them to any of the
15 lawyers or the witnesses or the litigants
16 about the case. The only way you should
17 contact anyone about this case is by a
18 note given to the Marshal after you and
19 the other jurors have talked about the
20 note and you have decided what should be
21 put in the note and that will be delivered
22 to me and when I get the note, I will make
23 a response to it.

24 At this time, I will ask you to step
25 into the corridor so I can listen to the

1 exceptions to the charge and any further
2 requests to charge which the lawyers are
3 entitled to make, at this time, so if you
4 will briefly step out, we will have you
5 back shortly.

6
7 (Jury escorted from the courtroom.)

8
9 THE COURT:

Mr. Raichle.

10 MR. RAICHLE:

11 Well, very briefly, your Honor, I
12 would like to preserve my points, my ob-
13 jections to the questions as phrased on
14 all the grounds I urged before.

15 Secondly, I except, - I find it hard
16 to use the word "object" to your statement
17 that the case should be decided on the
18 testimony, on the documents omitting, as
19 I believe you did on two occasions, a
20 reference to the stipulation. True, the
21 stipulation was offered in evidence and
22 might be comprehended by the word "exhibits
23 or documents", but I think in the context
24 of this case, I am entitled to a charge
25 on the significance of the stipulation.

I object to what your Honor has

*

*

*

1 berations.

2
3 (Jury retires at 10:20 a.m.)
4

5 THE COURT:

6 Mr. Raichle, Mr. Jones, if you will
7 simply notify Mr. White where you can be
8 contacted when the jury reports to us.
9 All right, we will be in recess.

10 (Recess taken at 10:21 a.m., pending
11 the deliberation of the jury.)
12
13
14

15 * * * * *

16
17 PROCEEDINGS:

November 6, 1975, 2:19 p.m.

18 APPEARANCES:

19 RAICHLE, BANNING, WEISS & HALPERN,
Attorneys for Plaintiff;
R. WILLIAM STEPHENS, Esq., of Counsel.

20 RICHARD J. ARCARA, United States Attorney,
Attorney for Defendant; THOMAS R. JONES,
21 Esq., and DAVID J. CURTIN, Esq., Attorneys,
United States Department of Justice,
22 of Counsel.

23
24 THE CLERK OF THE COURT: Jurors kindly answer to your names.
25

1 (Jury roll called; all jurors
2 present.)

3
4 THE CLERK: Will the foreman kindly rise.
5 Members of the jury, have you agreed upon
6 your verdict?

7 THE FOREMAN OF THE JURY: We have.

8 THE CLERK: Members of the jury, kindly listen
9 while the Court records your verdict.

10 Questions for the jury: One, were
11 the monies paid by Mobil Oil Company to
12 Mr. Joseph Weber during 1963, 1964, 1965,
13 earned by Joseph C. Weber, Inc., Weber
14 Oil Company or Joseph C. Weber, indivi-
15 dually? Answer, Joseph C. Weber, Inc.

16 Question two: If the answer to
17 question one is Joseph C. Weber, Inc.,
18 then answer this question; were the monies
19 paid intended by Joseph C. Weber, Inc., to
20 be compensation or dividends to Joseph C.
21 Weber as an individual at the time these
22 payments were received by Joseph C. Weber?
23 Answer, compensation.

24 Question three: If the answer to
25 question two is "compensation", then

1 answer this question; was the compensation
2 reasonable? Answer, "Yes".

3 Members of the jury, is your verdict
4 as the Court has recorded it?

5 THE FOREMAN:

Yes.

6 THE CLERK:

So say you all?

7 THE JURY:

Yes.

8 THE COURT:

Before I discharge them, is there
9 anything further?

10 MR. JONES:

Nothing, your Honor.

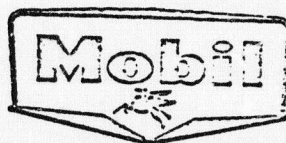
11 THE COURT:

Ladies and gentlemen, you are dis-
12 charged from consideration in this case
13 and we thank you for your attention and
14 your cooperation and we will have you back
15 soon, maybe next week. I know Judge
16 Elfvin has some business next week. I will
17 not be here. Thank you again. You may
18 now walk out.

19
20 (Jury escorted from the courtroom.)

21
22 THE COURT:

Mr. Jones and Mr. Stephens, with this
23 verdict, it seems to me rather than put
24 the burden on the clerk, can you agree
25 upon a form of a judgment here?



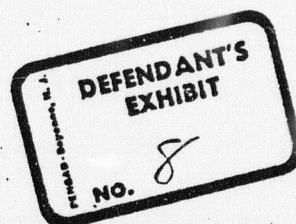
Wholesale Distributor Agreement

between

WEBER OIL COMPANY - OWNED BY JOSEPH WEBER, INC.

and

SOCONY MOBIL OIL COMPANY, INC.



CONTRACT made July 20, 1958, 1958 between
Socony Mobil Oil Company, Inc., a New York corporation having an office at 130 Pearl Street,
Buffalo, New York
 hereinafter called Seller, and **WEBER OIL COMPANY** - Owned and Operated by Joseph C. Weber, Inc.
 of 132 - 87th Street, Niagara Falls, New York
 jointly and severally if more than one, hereinafter called Buyer.

1 • **Products; Quantities** • Seller shall sell and Buyer shall purchase not less than the minimum and not more than the maximum quantities of the products set forth below, the amounts so sold and purchased within such limits to be those ordered by Buyer.

Products	Minimum Per Year	Maximum Per Year
MOBILGAS	32 000 - gals.	64 000 - gals.
MOBILGAS Special	_____ gals.	_____ gals.
SOVASOL	_____ gals.	_____ gals.
MOBILOIL	_____ gals.	_____ gals.
LUBRITE Motor Oil	_____ gals.	_____ gals.
Fuel Oil No. 6	750 000 gals.	1 500 000 gals.
MOBILGREASE	_____ pounds	_____ pounds
MOBILUBE	_____ pounds	_____ pounds
MOBILFUEL Diesel	_____ gals.	_____ gals.
MOBIL Kerosine	1 112 500 gals.	2 225 000 gals.
MOBILHEAT	3 000 000 gals.	6 000 000 gals.
MOBIL FREEZONE	_____ gals.	_____ gals.
MOBIL PERMAZONE	_____ gals.	_____ gals.
MOBIL Specialties	None	\$ _____
MOBIL Tires & Tubes	None	\$ _____
MOBIL Batteries	None	\$ _____
Automotive Accessories	None	\$ _____

Monthly purchases of automotive gasoline shall not exceed one tenth of the annual maximum quantity specified without Seller's consent.

For this contract 8 pounds of grease equal 1 gallon of oil, a gallon is a U. S. gallon of 231 cubic inches and a barrel is 50 gallons.

Quantities shall be computed without temperature adjustment except barge or tank car deliveries of _____

Mobilheat and Mobil Kerosine _____

_____ shall be adjusted to 60° F. in accordance with the latest supplement or amendment to ASTM-IP Petroleum Measurement Tables (ASTM Desig. D 1250)

2. **Prices:**

Mobilgas: Sellers posted tank wagon price at time and place of delivery: _____

Mobilheat and Mobil Kerosine:

A. Sellers posted delivered tank car price at time and place of delivery when products are delivered to Buyer's storage by Seller.

B. Sellers posted delivered tank car price at time of delivery, less current established transport rate, when products are received at Seller's plant into Buyer's transport. Prices are prior to taxes.

3 • **Deliveries** • Title and risk of loss shall pass at the delivery points hereinafter specified (on loading where delivery is at shipping point and on unloading where delivery is at destination). Transportation charges from those points shall be paid by Buyer except as otherwise noted.

Gasoline: Deliveries shall be made at 132 - 87th Street, Niagara Falls, New York
 in Tank Truck _____ furnished by _____

Naphthas: Deliveries shall be made at _____

in _____ furnished by _____

Kerosine, heating oil, Diesel fuel: Deliveries shall be made at 132 - 87th Street, Niagara Falls, N.Y.
 in Transports _____ furnished by Socony Mobil and/or buyer

Lubricants, specialties, anti-freeze: Deliveries shall be made at Buyer's bulk plant or warehouse at Nia. Falls
 in Dray Truck _____ furnished by _____

Tires, tubes, batteries, automotive accessories: Deliveries shall be made at Seller's warehouse f.o.b. carrier selected by Seller and consigned to Buyer at _____. Transportation charges shall be prepaid by Seller and at Seller's expense on each single shipment of 100 pounds or more. Buyer shall pay transportation charges on other shipments.

Schedule A

1. Buyer's territory for distribution of Mobilheat and Mobil Kerosine to Tank Wagon accounts, shall be within the city limits of Niagara Falls in the County of Niagara.
2. Seller will allow Buyer a commission of 4¢ per gallon on all new Mobilheat and/or #6 Fuel Oil tank car accounts which Buyer secures for Seller, provided approval has been granted by Seller.

It is understood that Seller reserves the right to terminate this portion of Schedule "A" at any time by written notice to Buyer.

3. Buyer shall deliver and invoice on Seller's forms, to listed tank wagon consumer account at a mutually agreed commission rate.

International Paper Company
Niagara Frontier Trans. System
Electro Metallurgical
Kimberly Clark

be used only for the original contents and shall be returned promptly in their delivered condition, less ordinary wear, to Seller's shipping point or warehouse as Seller may direct, freight collect. If Seller maintains in Buyer's area a regular pick-up service, Seller shall collect containers on notice. Deposit charges are payable without discount when payment for contents is due and shall be refunded provided the container is returned within 90 days. For failure so to return, Seller shall retain the deposit in settlement for the container and expenses.

10 • **Unloading** • Buyer shall promptly receive shipments, return empty cars as instructed, pay demurrage and any storage charges, and shall reimburse Seller for the actual cost of car rental charter hire and all damages for the time any means of transportation are held beyond a reasonable unloading period, which as to cars shall not exceed 48 hours in normal times.

4 • **Territory** • Buyer's distribution of products purchased hereunder shall not, without Seller's written consent, extend beyond the limits of the territory outlined on the map attached hereto and made a part hereof. Seller shall not sell products covered hereby in said territory other than to Buyer except (1) as provided in Schedule A attached hereto and (2) to buyers classified by Seller as national or governmental accounts. Seller, however, shall not be responsible for reshipment to or resale in the territory of any products sold to buyers outside thereof. Should Buyer after a reasonable time as determined by Seller fail to resell a product covered hereby to a party in said territory, Seller may sell directly or indirectly to such party without any liability to Buyer.

5 • **Equipment** • Seller shall not be obligated to furnish, repair or maintain any equipment for Buyer except as otherwise provided herein.

Buyer's motor delivery equipment, tank and pump and other dispensing equipment and sign poles used in connection with the handling of Seller's gasolines shall be painted in accordance with Seller's approved standards. Buyer's motor delivery equipment, tanks and other dispensing equipment used in connection with the handling of Seller's other products may be painted in accordance with Seller's approved standards. If Seller's marks and names are used, Buyer's motor delivery equipment used in the handling of Seller's products shall be painted by Seller when deemed necessary by it and at its expense. The original painting of dispensing equipment and signs and poles at any retail outlet supplied by Buyer shall be arranged for under this paragraph by Buyer subject to Seller's approval and shall be paid for by Seller. The expense of subsequent painting and of all other paintings shall be borne by Buyer. Any motor delivery equipment bearing Seller's trademarks or trade names or painted in accordance with Seller's approved standards shall be used solely for the handling of Seller's products.

Buyer shall maintain all tanks, hoses and connections in or through which Seller's products are handled while under Buyer's control in good and clean condition. Seller may refuse to make delivery if it believes that any such tank, hose or connection is not so maintained. Seller, however, assumes no responsibility for the condition or cleanliness of such equipment or for the inspection thereof.

Buyer shall obtain all necessary licenses and permits with respect to all equipment used by Buyer including motor delivery equipment.

6 • **Advertising and Promotional Material** • Buyer shall use Seller's trademarks and trade names to identify and advertise Seller's gasolines when handled by Buyer. Buyer may use Seller's trademarks and trade names to identify and advertise Seller's other products handled by Buyer. If such marks and names are so used, Seller shall lend to Buyer its usual signs advertising products purchased under this contract. The signs shall be used solely for the sale of Seller's products and shall be in such quantities and for such premises as Seller determines. Buyer shall take delivery at Seller's plant at Buffalo, New York

and transport, erect, install and maintain same at Buyer's expense. Buyer may in turn lend to other resellers purchasing from Buyer products covered by this contract such of said signs as Seller may authorize on terms and conditions approved by Seller. If Seller's marks and names are used, all printed matter and all advertising used by Buyer may include a facsimile of the Flying Red Horse or the MOBIL Emblem accompanied in every instance in conspicuous type by the legend, "Distributor of Mobilheat and Mobil Kerosine". (the trademarks of Seller's products handled by Buyer to be inserted in the blank). If Seller consents, Buyer may authorize other resellers described above to use similar printed matter and advertising on terms and conditions approved by Seller. All advertising, including color schemes of Seller's products, shall be subject to Seller's approval. Seller shall furnish Buyer, free of charge, with sales promotional material of kind and in quantities determined by Seller. On the termination of this contract, however arising, Buyer shall discontinue and shall cause others authorized by Buyer to discontinue all reference to Seller and all use of Seller's color schemes, trademarks, trade names, slogans and advertising and shall return to Seller all advertising and promotional material loaned by Seller.

7 • **Terms of Payment** • All prices are payable in cash at time of delivery except to the extent credit is extended. If credit is extended and Buyer's financial responsibility is at any time unsatisfactory to Seller, advance cash payment shall be made or satisfactory security given on Seller's demand. Cash discounts, if any, are not applicable to taxes, freight or container charges. All payments shall be at par.

8 • **Duration** • The term of this contract shall be Five year(s) from October 1, 1959 and for successive similar automatic renewal periods thereafter, provided, however, that it shall terminate at the end of any current period, original or renewal, on written notice from either party to the other, given not less than 90 nor more than 120 days prior to such termination.

Seller may terminate this contract forthwith on any default by Buyer or may cancel or suspend deliveries during default. Seller may terminate this contract by notice specifying the date of termination (a) if bankruptcy proceedings shall be instituted by or against Buyer, or if Buyer shall make a composition with creditors or an assignment for creditors, or take advantage of any law for the benefit of debtors, or if execution shall issue against Buyer or Buyer's effects, or if a receiver or trustee shall be appointed of Buyer's property; (b) if control of Buyer's business or the assets thereof shall pass by law or otherwise to any person or representative other than Buyer, or if Buyer shall enter into a contract for the sale of said business or assets; or (c) if Seller's bulk plant is leased to Buyer and said lease is terminated. Any termination shall be without prejudice to Seller's accrued rights. If Buyer is indebted to Seller at the time of any termination, title to Buyer's unsold products in good condition, bought from Seller, shall by notice to Buyer revert in Seller, who, on receipt in good condition, shall apply the amount charged therefor against such indebtedness. All rights and remedies of Seller are cumulative.

9 • **Returnable Containers** • All containers on which Seller charges a deposit shall remain Seller's property, shall be used only for the original contents and shall be returned promptly in their delivered condition, less ordinary wear, to Seller's shipping point or warehouse as Seller may direct, freight collect. If Seller maintains in Buyer's area a regular pick-up service, Seller shall collect containers on notice. Deposit charges are payable without discount when payment for contents is due and shall be refunded provided the container is returned within 90 days. For failure so to return, Seller shall retain the deposit in settlement for the container and expenses.

10 • **Unloading** • Buyer shall promptly receive shipments, return empty cars as instructed, pay demurrage and any storage charges, and shall reimburse Seller for the actual cost of car rental charter hire and all damages for the time any means of transportation are held beyond a reasonable unloading period, which as to cars shall not exceed 48 hours in normal times.

11 • **Contingencies** • Seller shall not be liable for loss, damage or demurrage due to any delay or failure in performance (a) because of compliance with any order, request or control of any governmental authority or person purporting to act therefor, or (b) when the supply of products or any facility of production, manufacture, storage, transportation, distribution or delivery contemplated by Seller is interrupted, unavailable or inadequate because of wars, hostilities, public disorders, acts of enemies, sabotage, strikes, lockouts, labor or employment difficulties, fires, acts of God, accidents or breakdowns, plant shutdowns for repairs, maintenance or inspection, weather conditions or any cause beyond its control whether or not similar to any of the foregoing. Seller shall not be required to remove any such cause or replace the affected source of supply or facility if it shall involve additional expense or a departure from its normal practices. If for any such cause there is, or Seller believes in its reasonable opinion there may be, such a shortage of supplies that Seller is or may be unable to meet the demands of all of its customers of all kinds, Seller may allocate among such customers its available supplies in such reasonable manner as it may determine. Seller shall not be required to make up deliveries omitted due to any of the causes referred to herein. Buyer shall not be liable for failure to receive products if Buyer is prevented from receiving and using them in its customary manner by any cause beyond its control.

12 • **Loaded Gasoline** • Buyer shall comply with all health and labeling requirements of any governmental agency, of the supplier of tetraethyl lead and of Seller.

13 • **Discontinuance of Products** • Seller reserves the right to discontinue, without liability, the sale in Buyer's territory of any product covered hereby. If, in that event, Seller shall sell in such territory another product of substantially the same quality, it shall be substituted for the one discontinued.

14 • **Claims** • Any claim for deficiency in quality (other than in respect of tires, tubes and batteries) or quantity shall be waived unless (1) within 10 days after delivery Buyer confirms the claim by written notice to Seller and gives Seller an opportunity to inspect, (2) a quantity claim as to an unpackaged product delivered into equipment owned or supplied by Buyer is made before product leaves shipping point and (3) a quality claim as to unpackaged product is accompanied by a true sample. Quality claims in respect of tires, tubes and batteries shall be waived unless made in accordance with the provisions of Seller's then current adjustment policies covering such products. Furthermore, Buyer agrees in consideration of Seller's execution of this contract that any claim of any kind by Buyer based on or arising out of this contract or otherwise shall be barred unless asserted by Buyer by the commencement of an action within 12 months after the delivery of the products or other event, action or inaction to which such claim relates. This provision shall survive any termination of this contract, however arising.

15 • **Taxes** • The amount of any present or future governmental tax, fee or duty (not included in the price or otherwise paid by Buyer) on or measured by (a) this contract, (b) the products or constituent materials covered hereby or (c) the manufacture, sale, use or handling of said products or materials, shall be paid by Buyer to Seller.

16 • **Change of Trademarks and Color** • Seller may at any time change the trademarks or any distinctive designation or color of any product.

17 • **Indemnity** • Buyer shall indemnify and hold Seller harmless against all losses and claims (including those of the parties, their agents and employees) for death, personal injury or property damage arising out of (1) the use or condition of Buyer's premises or of equipment and facilities used by Buyer (including motor delivery equipment) regardless of any defects therein, (2) Buyer's non-performance of this contract or (3) Buyer's storage and handling of products or containers. Seller does not warrant or guarantee any equipment or facilities.

18 • **Credit Customers** • Buyer may, when requested by Seller, sell the products purchased hereunder to Buyer's customers on credit authorized by Seller and on each such sale shall assign to Seller the account receivable in such manner as Seller may direct, for which Seller shall pay as full payment the face amount thereof, not to exceed however Buyer's regular posted price at time of sale and provided such assignment is made within 30 days after such sale. With respect to any deliveries made by Buyer to Seller's customers, a separate agreement shall be made.

19 • **Arbitration** • Any controversy or claim arising out of, or relating to this contract or the breach thereof shall be settled by arbitration in accordance with the Rules then obtaining of the American Arbitration Association and judgment upon the award rendered may be entered in any Court having jurisdiction thereof.

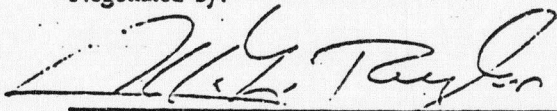
20 • **Orders** • Orders shall be in writing designating destination and shall be given 5 days before shipment is to be made.

21 • **Approximate Quantities** • Deliveries within 10% of any amount ordered shall be deemed sufficient but payment shall be made only for the actual amounts delivered.

22 • **Miscellaneous** • Any assignment of this contract by Buyer without Seller's written consent shall be void. This instrument contains the entire agreement covering the subject matter. Seller's right to require strict performance shall not be affected by any previous waiver or course of dealing. Neither this contract nor any modification shall be binding on Seller unless signed by an authorized representative. Part performance shall not be deemed a waiver of this requirement. Any notice hereunder shall be in writing and shall be delivered personally (to an officer or manager in the case of Seller) or sent by mail to the address specified above unless changed by notice. Notice by mail shall be deemed given at the expiration of the time normally required to make delivery. In no event shall Seller be liable for prospective profits or special, indirect or consequential damages.

Executed and delivered the day and year first above written.

Negotiated by:

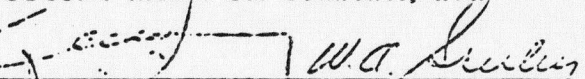


Seller's Salesman

Witness

SOCONY MOBIL OIL COMPANY, INC.

By



W. A. Sullivan, Pres.
BUYER



Wholesale Distributor Agreement

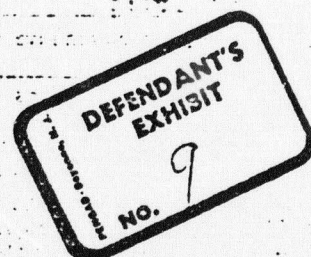
between

WEBER OIL COMPANY - OWNED BY JOSEPH C. WEBER, INC.

and

MOBIL OIL COMPANY

A Division of Socony Mobil Oil Company, Inc.



CO-690 (10-59)

CONTRACT made

January 13 - 248

1965 between

Mobil Oil Company, A Division of Socony Mobil Oil Company, Inc., having an office at
162 Washington Ave., Albany, N. Y.

hereinafter called Seller, and **Weber Oil Company** - Owned and Operated by Joseph C. Weber, Inc.
of 132-87th Street, Niagara Falls, N. Y.

jointly and severally if more than one, hereinafter called Buyer.

1 • Products; Quantities • Seller shall sell and Buyer shall purchase not less than the minimum and not more than the maximum quantities of the products set forth below, the amounts so sold and purchased within such limits to be those ordered by Buyer.

Products	Minimum Per Year	Maximum Per Year
MOBILGAS	_____ gals.	_____ gals.
MOBILGAS Special	_____ gals.	_____ gals.
SOVASOL	_____ gals.	_____ gals.
MOBILLOIL	_____ gals.	_____ gals.
LUBRITE Motor Oil	_____ gals.	_____ gals.
FUEL OIL # 4	100,000 gals.	200,000 gals.
FUEL OIL # 6	250,000 gals.	500,000 gals.
MOBILGREASE	_____ pounds	_____ pounds
MOBILUBE	_____ pounds	_____ pounds
MOBILFUEL Diesel	_____ gals.	_____ gals.
MOBIL/Kerosine	750,000 gals.	1,500,000 gals.
MOBILHEAT	2,000,000 gals.	4,000,000 gals.
MOBIL FREEZONE	_____ gals.	_____ gals.
MOBIL PERMAZONE	_____ gals.	_____ gals.
MOBIL Specialties	None	\$ _____
MOBIL Tires & Tubes	None	\$ _____
MOBIL Batteries	None	\$ _____
Automotive Accessories	None	\$ _____

Monthly purchases of automotive gasoline shall not exceed one tenth of the annual maximum quantity specified without Seller's consent.

For this contract 8 pounds of grease equal 1 gallon of oil, a gallon is a U. S. gallon of 231 cubic inches and a barrel is 50 gallons.

Quantities shall be computed without temperature adjustment except barge or tank car deliveries of Mobilheat and Mobil Kerosine and each single delivery of _____

Prices: _____ in excess of _____ gallons which shall be adjusted to 60° F. in
_____ to ASTM IP Petroleum Measurement Tables (ASTM Desig. D 1250)
Mobilheat and Mobil Kerosine

- A.** Seller's posted delivered tank car price at time and place of delivery when products are delivered to Buyer's storage by Seller.
- B.** Seller's posted delivered tank car price at time of delivery, less current established transport rate, when products are received at Seller's plant into Buyer's transport. Prices are prior to taxes.
- Deliveries** • Title and risk of loss shall pass to Buyer at destination (Title is at shipping point and on unloading where delivery is at destination). Transportation charges from those points shall be paid by Buyer except as otherwise noted.

Gasoline: Deliveries shall be made at _____

furnished by _____

Appendent to above price structure:

Mobilheat price \$.0965 F.O.B. Niagara Falls guaranteed through December 31, 1964.

Special Allowance \$.0065 per gallon.

Special allowance of \$.0065 per gallon to be the minimum allowance throughout the term of the contract.

After January 1, 1965, any increase in price, Weber to share 50% to a maximum of \$.0105 per gallon exclusive of any V.A.

resale in the territory of any products sold to buyers outside thereof. Should Buyer after a reasonable time as determined

3/5/65
E.207
3-9-65
JW

11/15/64
JW

June 8, 1965

BUY-BACK ACCOUNTS

WEBER OIL COMPANY

Est.
Volume

Gasoline

Kerosine

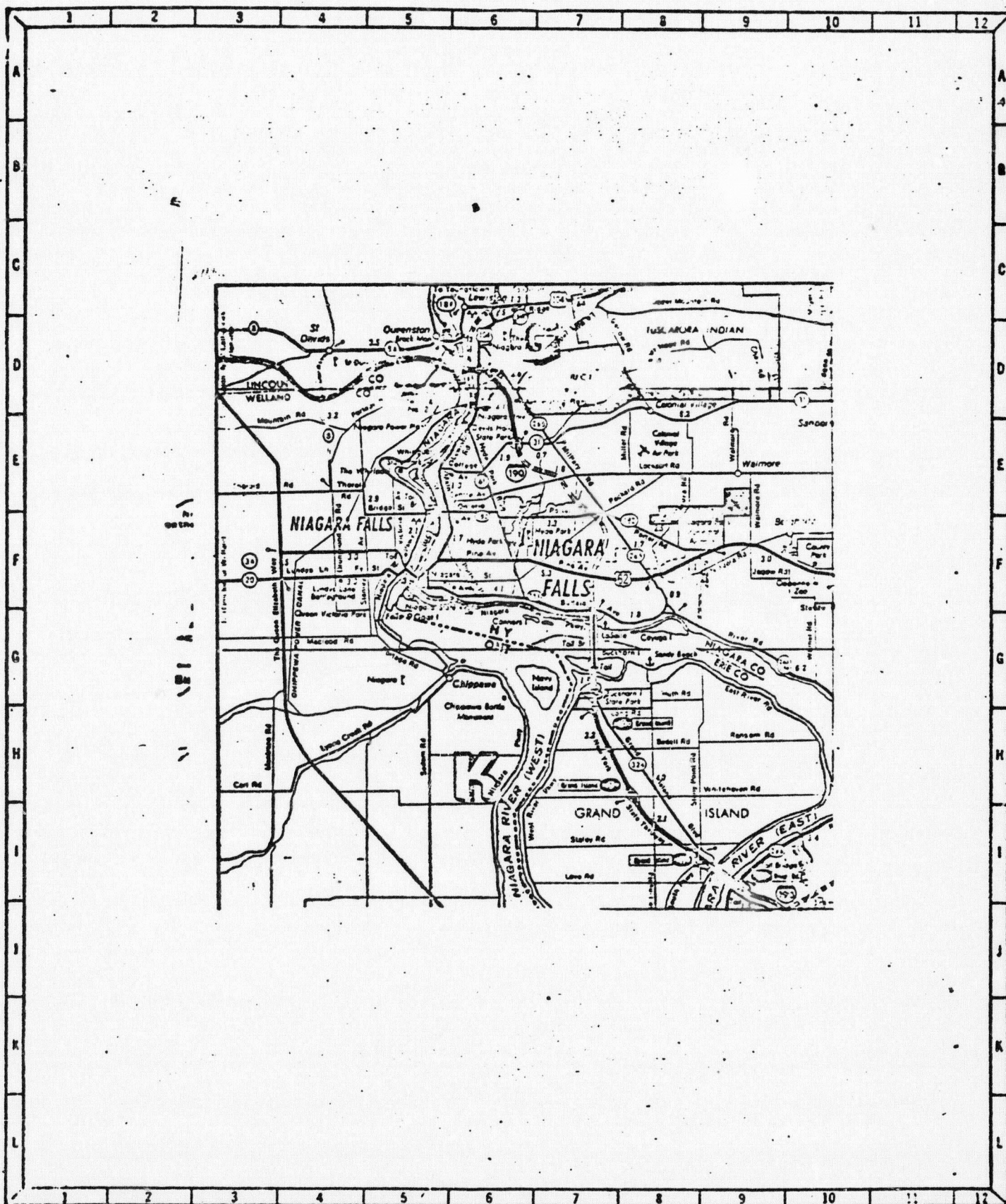
Mobilheat

2 500

Kimberly-Clark, Niagara Falls, N. Y.

.03

POPULATION 189,992



Schedule A

1. Buyer's territory for distribution of Mobilheat and Mobil Kerosine to Tank Wagon accounts, shall be within the city limits of Niagara Falls in the County of Niagara.
2. Seller will allow Buyer a commission of $\frac{1}{10}$ ¢ per gallon on all new Mobilheat and/or #6 Fuel Oil tank car accounts which Buyer secures for Seller, provided approval has been granted by Seller.

It is understood that Seller reserves the right to terminate this portion of Schedule "A" at any time by written notice to Buyer.

3. Buyer shall deliver and invoice on Seller's forms, to listed tank wagon consumer account at a mutually agreed commission rate.

International Paper Company
Niagara Frontier Trans. System
Electro Metallurgical
Kimberly Clark

3/5/65
E.C.O.N.
3/9/65
JW

by Seller fail to resell a product covered hereby to a party in said territory, Seller may sell directly or indirectly to such party without any liability to Buyer.

5 • Equipment • Seller shall not be obligated to furnish, repair or maintain any equipment for Buyer except as otherwise provided herein.

Buyer's motor delivery equipment, tank and pump and other dispensing equipment and sign poles used in connection with the handling of Seller's gasolines shall be painted in accordance with Seller's approved standards. Buyer's motor delivery equipment, tanks and other dispensing equipment used in connection with the handling of Seller's other products may be painted in accordance with Seller's approved standards. If Seller's marks are used, Buyer's motor delivery equipment used in the handling of Seller's products shall be painted by Seller when deemed necessary by it and at its expense. The original painting of dispensing equipment and signs and poles at any retail outlet supplied by Buyer shall be arranged for under this paragraph by Buyer subject to Seller's approval and shall be paid for by Seller. The expense of subsequent painting and of all other paintings shall be borne by Buyer. Any motor delivery equipment bearing Seller's trademarks or painted in accordance with Seller's approved standards shall be used solely for the handling of Seller's products.

Buyer shall maintain all tanks, hoses and connections in or through which Seller's products are handled while under Buyer's control in good and clean condition. Seller may refuse to make delivery if it believes that any such tank, hose or connection is not so maintained. Seller, however, assumes no responsibility for the condition or cleanliness of such equipment or for the inspection thereof.

Buyer shall obtain all necessary licenses and permits with respect to all equipment used by Buyer including motor delivery equipment.

6 • Advertising and Promotional Material • Buyer shall use Seller's trademarks to identify and advertise Seller's gasolines when handled by Buyer. Buyer may use Seller's trademarks to identify and advertise Seller's other products handled by Buyer. If such marks are so used, Seller shall lend to Buyer its usual signs advertising products purchased under this contract. The signs shall be used solely for the sale of Seller's products and shall be in such quantities and for such premises as Seller determines. Buyer shall take delivery at Seller's plant at Buffalo and transport, erect, install and maintain same at Buyer's expense. Buyer may in turn lend to other resellers purchasing from Buyer products covered by this contract such of said signs as Seller may authorize on terms and conditions approved by Seller. If Seller's marks are used, all printed matter and all advertising used by Buyer may include a facsimile of the Flying Red Horse or the MOBIL Emblem accompanied in every instance in conspicuous type by the legend, "Distributor of Mobilheat and Mobil Kerosine", (the trademarks of Seller's products handled by Buyer

to be inserted in the blank). If Seller consents, Buyer may authorize other resellers described above to use similar printed matter and advertising on terms and conditions approved by Seller. All advertising, including color schemes of Seller's products, shall be subject to Seller's approval. Seller shall furnish Buyer, free of charge, with sales promotional material of kind and in quantities determined by Seller. On the termination of this contract, however arising, Buyer shall discontinue and shall cause others authorized by Buyer to discontinue all reference to Seller and all use of Seller's color schemes, trademarks, slogans and advertising and shall return to Seller all advertising and promotional material loaned by Seller.

7 • Terms of Payment • All prices are payable in cash at time of delivery except to the extent credit is extended. If credit is extended and Buyer's financial responsibility is at any time unsatisfactory to Seller, advance cash payment shall be made or satisfactory security given on Seller's demand. Cash discounts, if any, are not applicable to taxes, freight or container charges. All payments shall be at par.

8 • Duration • The term of this contract shall be One year(s) from September 1, 1964 and for successive similar automatic renewal periods thereafter, provided, however, that it shall terminate at the end of any current period, original or renewal, on written notice from either party to the other, given not less than 90 nor more than 120 days prior to such termination.

Seller may terminate this contract forthwith on any default by Buyer or may cancel or suspend deliveries during default. Seller may terminate this contract by notice specifying the date of termination (a) if bankruptcy proceedings shall be instituted by or against Buyer, or if Buyer shall make a composition with creditors or an assignment for creditors, or take advantage of any law for the benefit of debtors, or if execution shall issue against Buyer or Buyer's effects, or if a receiver or trustee shall be appointed of Buyer's property; (b) if control of Buyer's business or the assets thereof shall pass by law or otherwise to any person or representative other than Buyer, or if Buyer shall enter into a contract for the sale of said business or assets; or (c) if Seller's bulk plant is leased to Buyer and said lease is terminated. Any termination shall be without prejudice to Seller's accrued rights. If Buyer is indebted to Seller at the time of any termination, title to Buyer's unsold products in good condition, bought from Seller, shall by notice to Buyer revert in Seller, who, on receipt in good condition, shall apply the amount charged therefor against such indebtedness. All rights and remedies of Seller are cumulative.

9 • Returnable Containers • All containers on which Seller charges a deposit shall remain Seller's property, shall be used only for the original contents and shall be returned promptly in their delivered condition, less ordinary wear, to Seller's shipping point or warehouse as Seller may direct, freight collect. If Seller maintains in Buyer's area a regular pick-up service, Seller shall collect containers on notice. Deposit charges are payable without discount when payment for contents is due and shall be refunded provided the container is returned within 90 days. For failure so to return, Seller shall retain the deposit in settlement for the container and expenses.

10 • Unloading • Buyer shall promptly receive shipments, return empty cars as instructed, pay demurrage and any storage charges, and shall reimburse Seller for the actual cost of car rental, charter hire and all damages for the time any means of transportation are held beyond a reasonable unloading period, which as to cars shall not exceed 48 hours in normal times.

11 • Contingencies • Seller shall not be liable for loss, damage or demurrage due to any delay or failure in performance (a) because of compliance with any order, request or control of any governmental authority or person purporting to act therefor, or (b) when the supply of products or any facility of production, manufacture, storage, transportation, distribution or delivery contemplated by Seller is interrupted, unavailable or inadequate because of wars, hostilities, public disorders, acts of enemies, sabotage, strikes, lockouts, labor or employment difficulties, fires, acts of God, accidents or breakdowns, plant shutdowns for repairs, maintenance or inspection, weather conditions or any cause beyond its control whether or not similar to any of the foregoing. Seller shall not be required to remove any such cause or replace the affected

source of supply or facility if it shall involve additional expense or a departure from its normal practices. If for any such cause there is, or Seller believes in its reasonable opinion there may be, such a shortage of supplies that Seller is or may be unable to meet the demands of all of its customers of all kinds, Seller may allocate among such customers its available supplies in such reasonable manner as it may determine. Seller shall not be required to make up deliveries omitted due to any of the causes referred to herein. Buyer shall not be liable for failure to receive products if Buyer is prevented from receiving and using them in its customary manner by any cause beyond its control.

12 • Lead Gasoline • Buyer shall comply with all health and labeling requirements of any governmental agency, of the supplier of tetraethyl lead and of Seller.

13 • Discontinuance of Products • Seller reserves the right to discontinue, without liability, the sale in Buyer's territory of any product covered hereby. If, in that event, Seller shall sell in such territory another product of substantially the same quality, it shall be substituted for the one discontinued.

14 • Claims • Any claim for deficiency in quality (other than in respect of tires, tubes and batteries) or quantity shall be waived unless (1) within 10 days after delivery Buyer confirms the claim by written notice to Seller and gives Seller an opportunity to inspect, (2) a quantity claim as to an unpackaged product delivered into equipment owned or supplied by Buyer is made before product leaves shipping point and (3) a quality claim as to unpackaged product is accompanied by a true sample. Quality claims in respect of tires, tubes and batteries shall be waived unless made in accordance with the provisions of Seller's then current adjustment policies covering such products. Furthermore, Buyer agrees in consideration of Seller's execution of this contract that any claim of any kind by Buyer based on or arising out of this contract or otherwise shall be barred unless asserted by Buyer by the commencement of an action within 12 months after the delivery of the products or other event, action or inaction to which such claim relates. This provision shall survive any termination of this contract, however arising.

15 • Taxes • The amount of any present or future governmental tax, fee or duty (not included in the price or otherwise paid by Buyer) on or measured by (a) this contract, (b) the products or constituent materials covered hereby or (c) the manufacture, sale, use or handling of said products or materials, shall be paid by Buyer to Seller.

16 • Change of Trademarks and Color • Seller may at any time change the trademarks or any distinctive designation or color of any product.

17 • Indemnity • Buyer shall indemnify and hold Seller harmless against all losses and claims (including those of the parties, their agents and employees) for death, personal injury or property damage arising out of (1) the use or condition of Buyer's premises or of equipment and facilities used by Buyer (including motor delivery equipment) regardless of any defects therein, (2) Buyer's non-performance of this contract or (3) Buyer's storage and handling of products or containers. Seller does not warrant or guarantee any equipment or facilities.

18 • Credit Customers • Buyer may, when requested by Seller, sell the products purchased hereunder to Buyer's customers on credit authorized by Seller and on each such sale shall assign to Seller the account receivable in such manner as Seller may direct, for which Seller shall pay as full payment the face amount thereof, not to exceed however Buyer's regular posted price at time of sale and provided such assignment is made within 30 days after such sale. With respect to any deliveries made by Buyer to Seller's customers, a separate agreement shall be made.

19 • Orders • Orders shall be in writing designating destination and shall be given not less than 5 days before shipment is to be made.

20 • Approximate Quantities • Deliveries within 10% of any amount ordered shall be deemed sufficient but payment shall be made only for the actual amounts delivered.

21 • Pre-emption • Buyer shall not sell, grant options in respect of, nor, except in the ordinary course or conduct of Buyer's business, lease or otherwise dispose of Buyer's petroleum business, or any assets or properties used in connection therewith without giving Seller a sixty (60) day option within which to purchase or otherwise acquire the same on the same terms and conditions as those on which Buyer is willing to make such disposition to any other party. Buyer shall give Seller prompt written notice of said terms and conditions and shall submit a full and accurate copy of any bona fide offer received by Buyer, sworn to by Buyer as being a true copy of such offer. Seller shall have access during said sixty (60) day period to Buyer's books and records. If Seller exercises its option, it shall do so in writing within sixty (60) days after receipt of such notice and the closing shall take place at Seller's office at the above address thirty (30) days after the exercise of the option, whereupon Buyer shall, in the case of a sale, deliver to Seller a full covenant and warranty deed, assignment or bill of sale, as the case may be, conveying a good, marketable and clear title subject only to the liens and encumbrances which are specifically excepted in the proposed terms and conditions or, in the case of any other disposition, deliver to Seller an instrument or instruments in form and substance satisfactory to Seller and sufficient to transfer the interest proposed to be disposed of. Failure to exercise this option on one or more occasions shall not affect this pre-emptive right on other occasions thereafter arising whether involving the same or other property.

22 • Miscellaneous • Any assignment of this contract by Buyer without Seller's written consent shall be void. This instrument contains the entire agreement covering the subject matter. Seller's right to require strict performance shall not be affected by any previous waiver or course of dealing. Neither this contract nor any modification shall be binding on Seller unless signed by an authorized representative. Part performance shall not be deemed a waiver of this requirement. Any notice hereunder shall be in writing and shall be delivered personally (to an officer or manager in the case of Seller) or sent by mail to the address specified above unless changed by notice. Notice by mail shall be deemed given at the expiration of the time normally required to make delivery. In no event shall Seller be liable for prospective profits or special, indirect or consequential damages. Wherever reference is made to Mobil Oil Company or Seller, it shall be deemed to mean Socony Mobil Oil Company, Inc.

Executed and delivered the day and year first above written By Mobil Oil Company
Negotiated by: A Division of Socony Mobil Oil Co., Inc.

P. A. McEwen
Seller's Salesman

Witness

Joseph C. Tilton, Pres.
BUYER



- 254 -

CREDIT
INVOICE

Mobil Oil Company

A Division of Esso Mobil Oil Company, Inc.

Issue Check

#652216-3
Joseph C. Weber, Inc.
Niagara Falls
New York

Charge Realization
Temporary Allowance

NO.

DATE August 25, 1964

MONTH	PRODUCT CODE	PKG. CODE	PRODUCT	GALLONS	RATE	AMOUNT
July 1964	13001-3	X	MOBIL KEROSENE	34 966	.0025	\$ 87.42

18001-8 X MOBILHEAT

44 615 .0025 111.54

\$198.96

Make out and mail check to:

Joseph C. Weber
932 Cayuga Drive
Niagara Falls, N. Y.

SELLER FUEL OIL CREDITS.
UNCH X IN PACKAGE CODE FIELD.

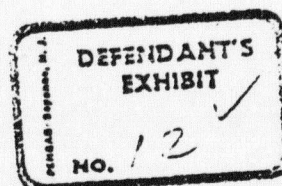
TOTAL	125.240R
TOTAL OF ITEMS, CHECKED ABOVE \$	
LESS DISCOUNT	
AMOUNT PAID \$	

PLEASE
CHECK
ITEMS
BEING
PAID

William S. S. / 64

(APPROVAL)

				15.00





Mobil Oil Company

A Division of Standard Oil Company, Inc.

CREDIT
INVOICE

ISSUE CHECK

NO.

DATE December 31, 1954

#652 216-3

Weber Oil Company
132 - 87th Street
Niagara Falls, New York

Charge - Realization
Temporary Allowance

MONTH	PRODUCT CODE	PKG. CODE	PRODUCT	GALLONS	RATE	AMOUNT
-------	-----------------	--------------	---------	---------	------	--------

Per 13001-3 X MOBIL KEROSENE

9				42 852	.0065	\$278.54
31				52 196	.0095	495.86

18001-8 X MOBILHEAT

9				61 869	.0065	402.15
31				142 516	.0095	1353.90

\$2530.45

SELLER FUEL OIL CREDITS.
NCH X IN PACKAGE CODE FIELD.

TOTAL		
Credit For Empties Returned		
4	Cases @ .75	3.00
1	Shells @ .27	.27
	Bottles @ .02	
	Cases @ 1.00	
	Shells @ .40	
	Bottles @ .05	

Net Amount Charged 43.27

Customer's Signature *James H. Hartman*
Per _____

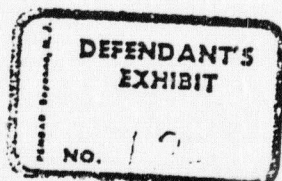
Notes and bottles are loaned not sold, and must be returned to us; any compensation for the non-return of same is not to be considered a sale.

SENT ON REQUEST ONLY

PRINTED BY THE STANDARD REGISTER COMPANY, U. S. A. ZIPSET 3

- 0101 - 000 - 0000300	
- 0101 - 000 - 0000400	
- 0101 - 000 - 0000500	
- 0101 - 000 - 0000600	
- 0101 - 000 - 0000700	
- 0101 - 000 - 0000800	

NATIONAL SHAWMUT BANK OF BOSTON



BEST COPY AVAILABLE

CREDIT
INVOICE

Mobil Oil Company

A Division of Sohny Mobil Oil Company, Inc.

ISSUE CHECK

#652 216-3
Weber Oil Co.
132-87th Street
Niagara Falls, New YorkCharge - Realization
Temporary Allowance

NO.

DATE December 31, 1964

MONTH	PRODUCT CODE	PKG. CODE	PRODUCT	GALLONS	RATE	AMOUNT
-------	--------------	-----------	---------	---------	------	--------

September	13001-3	X	MOBIL KEROSENE	64 681	.0065	\$ 420.43
-----------	---------	---	----------------	--------	-------	-----------

	18001-8	X	MOBILHEAT	164 027	.0065	1066.18
--	---------	---	-----------	---------	-------	---------

\$1486.61

RESELLER FUEL OIL CREDITS.
PLACE X IN PACKAGE CODE FIELD.

	TOTAL
Credit For Empties Returned	
9 Cases @ .75	3.00
1 Shells @ .27	.27
Empties @ .02	
Cases @ 1.00	
Shells @ .40	
Bottles @ .05	
Net Amount Charged	3.27

SENT ON REQUEST ONLY

PRINTED BY THE STANDARD REGISTER COMPANY, U. S. A. ZIPSET 3

SALES
Customer's Signature *James Hartman*
Per

Cases and bottles are loaned not sold, and must be returned to us; any compensation for the non-return of same is not to be considered a sale.

THE NATIONAL SHAWMUT BANK OF BOSTON

- 0101 - 000 - 0000300

- 0101 - 000 - 0000400

- 0101 - 000 - 0000500

- 0101 - 000 - 0000600

- 0101 - 000 - 0000700

- 0101 - 000 - 0000800

BEST COPY AVAILABLE



CREDIT
INVOICE

Mobil Oil Company
A Division of Socony Mobil Oil Company, Inc.

ISSUE CHECK

NO.

#652 216-3
• Weber Oil Company
• 132 - 87th Street
• Niagara Falls, New York

Charge - Realization
Temporary Allowance

DATE December 31, 1964

MONTH	PRODUCT CODE	PKG CODE	PRODUCT	GALLONS	RATE	AMOUNT
-------	--------------	----------	---------	---------	------	--------

November	13001 - 3	X	MOBIL KEROSENE			
1 - 26				88 215	.0095	\$ 838.04
27 - 30				24 570	.0145	356.27

	18001 - 8	X	MOBILHEAT			
1 - 26				217 975	.0095	2070.76
27 - 30				84 798	.0145	1229.57
						\$4494.64

RESELLER FUEL OIL CREDITS.
PUNCH X IN PACKAGE CODE FIELD.

[Signature]
(APPROVAL)

		TOTAL	765
Credit For Empties Returned			
4	Cases @ .75	3.00	
1	Shells @ .27	.27	
	Bottles @ .02		
	Cases @ 1.00		
	Shells @ .40		
	Bottles @ .05		
Net Amount Charged		4.27	

SENT ON REQUEST ONLY

PRINTED BY THE STANDARD REGISTER COMPANY, U. S. A. ZIPSET
PRINTED BY THE STANDARD REGISTER COMPANY, U. S. A. ZIPSET

SALE
Customer's Signature *James H. [Signature]*
Per

Cases and bottles are loaned not sold, and must be returned to us; any compensation for the non-return of same is not to be considered a sale.

101 - 000 - 0000300	
101 - 000 - 0000400	
101 - 000 - 0000500	
101 - 000 - 0000600	
101 - 000 - 0000700	
101 - 000 - 0000800	

NATIONAL SHAWMUT BANK OF BOSTON



CREDIT INVOICE

True Check

Mobil Oil Company

A Division of Socony Mobil Oil Company, Inc.

a/c # 652216-3

weber oil co.

152-8744 54.

Niagara Falls, N.Y.

Charge Realization

Temporary Allowance

№3.

DATE _____

10/23/64

MONTH	PRODUCT CODE	PKG. CODE	PRODUCT	GALLONS	RATE	AMOUNT
-------	--------------	-----------	---------	---------	------	--------

13001 - 3

X

MOBIL KEROSENE

18001 - 8

X

MOBILHEAT

7694 0.0025

19.24

307 e:003

۱۰۵

20.78

Del. to Niagara
N.Y. Aug. 1967

RESELLER FUEL OIL CREDITS.
PUNCH X IN PACKAGE CODE FIELD.

(APPROVAL)

				(+) - 60	17
					#1-29
	TOTALS	Rec'd			
	DISCOUNT	Paid			
	TOTAL	Filing			
	USE AND SALES TAX	Account			
	TOTAL				
	TOTAL CORE DEPOSIT ADDED				

3DS RETURNABLE
TER 30 DAYS

F-151



CREDIT
INVOICE

Mobil Oil Company
A Division of Socony Mobil Oil Company, Inc.

SHIPPED FROM

No.

Joseph C. Weber
932 Cayuga Drive
Niagara Falls, N.Y.

ACOL	M. O. D.	VIA	SHIPPED TO	F. O. B.	INVOICE DATE
					2/25/64
CUSTOMER ORDER NO.		TERMS	CASH DISC. OF	IF PAID ON OR BEFORE	NET
					CUSTOMER NO.
					625216-3

OFFICE CODES		PACKAGES		PRODUCTS	QUANTITY	PRICE	AMOUNT
SUBJECT	TAX	NO.	SIZE				
01				HEAVY STEEL BARRELS & DRUMS			
02				LIGHT STEEL DRUMS	55 GALS.		
03				LIGHT STEEL DRUMS	30 GALS.		
04				LIGHT STEEL DRUMS	16 GALS.		
05				LIGHT STEEL DRUMS	15 GALS.		

<i>7021964</i>	<i>Mobilheat</i>	<i>337671 gals</i>	<i>C.01235</i>	<i>4170.24</i>
<i>if</i>	<i>Kerosene</i>	<i>271538 gals</i>	<i>C.01235</i>	<i>3353.74</i>
	<i>Mobilheat</i>	<i>307561 gals</i>	<i>C.00835</i>	<i>2568.13</i>
				<i>10092.11</i>

21 by check mailed
932 Cayuga Drive
Niagara Falls, N.Y.

TAXES ARE NOT SHOWN SEPARATELY. THE
T PRICE SHOWN ABOVE INCLUDES ANY AP-
PLICABLE ACCRUED FEDERAL AND/OR STATE
TAXES AND/OR EXCISE TAXES UNLESS
OTHERWISE INDICATED ON THIS INVOICE.

ABOVE PRODUCTS AND QUANTITIES RECEIVED
FOR MOBIL OIL COMPANY

RECEIVED PAYMENT

DATE

13.05

1-781
508
HIA, S. PA.



CREDIT
INVOICE

Mobil Oil Company
A Division of Socony Mobil Oil Company, Inc.

SHIPPED FROM

No.

Joseph C. Weber
932 Cayuga Drive
Niagara Falls, N.Y.

M. O. D.	VIA	SHIPPED TO	F. O. B.	INVOICE DATE
				<i>2/25/64</i>
CUSTOMER ORDER NO.		TERMS	CASH DISC. OF	IF PAID ON OR BEFORE
			NET	CUSTOMER NO.

ICE CODES		PACKAGES		PRODUCTS	QUANTITY	PRICE	AMOUNT
TAX	NO.	SIZE					
D1				HEAVY STEEL BARRELS & DRUMS			
D2				LIGHT STEEL DRUMS	55 GALS.		
D3				LIGHT STEEL DRUMS	30 GALS.		
D4				LIGHT STEEL DRUMS	16 GALS.		
D5				LIGHT STEEL DRUMS	13 GALS.		
<i>11964</i> <i>932 Cayuga Drive</i> <i>Niagara Falls, N.Y.</i>				<i>42 Fuel oil</i>	<i>54.085</i>	<i>0.0025</i>	<i>1.3521</i>
				<i>170 bil heat</i>	<i>9301</i>	<i>0.0025</i>	<i>23.25</i>
				<i>170 bil heat</i>	<i>3420</i>	<i>0.005</i>	<i>17.10</i>
				<i>Per V. Check in full</i>			
				<i>932 Cayuga Drive</i> <i>Niagara Falls, N.Y.</i>			
S ARE NOT SHOWN SEPARATELY. THE ICE SHOWN ABOVE INCLUDES ANY AP-E ACCRUED FEDERAL AND/OR STATE FUELS AND/OR EXCISE TAXES UNLESS USE INDICATED ON THIS INVOICE.				ABOVE PRODUCTS AND QUANTITIES RECEIVED FOR MOBIL OIL COMPANY		RECEIVED PAYMENT	

SALE *13.05*



CREDIT
INVOICE

Mobil Oil Company

Issue Check

Acct # 602216-3

A Division of Socony Mobil Oil Company, Inc.

weber oil Co.

Charge: Realization

132-87454

Temporary Allowance

NO.

DATE 9/2/64

Niagara Falls, N.Y.

MONTH	PRODUCT CODE	PKG. CODE	PRODUCT	GALLONS	RATE	AMOUNT
-------	-----------------	--------------	---------	---------	------	--------

13001-3 X MOBIL KEROSENE

18001-8 X MOBILHEAT

11,185 .0025 27.97
1,143 .0005 5.72
33.69

Del. to
Niagara Univ.
Our Lady of the Holy Rosary

July 1964

RESELLER FUEL OIL CREDITS.
PUNCH X IN PACKAGE CODE FIELD.

(APPROVAL)

0	AR	6053111	TE	6	39	44
---	----	---------	----	---	----	----

CHEMICAL BANK N.Y. TRUST
Acct. Chargeable 3-0101-000-0000600

(Signature)

Authorized Signature

(Signature)

W. Sawyer

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH C. WEBER, INC.,

Plaintiff,

vs.

Civil No. 1970-4

UNITED STATES OF AMERICA,

JUDGMENT

Defendant.

This cause came on for trial before the Honorable John T. Curtin, District Judge on November 4 through November 6, 1975, both parties appearing by counsel and the Court having submitted issues to the Jury and the Jury having answered as follows:

1. Were the monies paid by Mobil Oil Company to Mr. Joseph Weber during 1963, 1964 and 1965 earned by Joseph C. Weber, Inc. (Weber Oil Company), or by Joseph C. Weber, individually?

JOSEPH C. WEBER, INC.	<u>X</u>
JOSEPH C. WEBER	<u> </u>

2. If the answer to question "1" is Joseph C. Weber, Inc. (Weber Oil Company), then answer this question: Were the monies paid intended by Joseph C. Weber, Inc. to be compensation or dividends to Joseph C. Weber as an individual at the time these payments were received by Joseph C. Weber?

COMPENSATION	<u>X</u>
DIVIDENDS	<u> </u>

3. If the answer to question "2" is "COMPENSATION",
then answer this question: Was the compensation reasonable?

YES
NO

X

And now in accordance with the special verdict of the
Jury, it is hereby ORDERED, ADJUDGED and DECREED that the plaintiff
recover of the defendant, United States of America, the sum of
\$32,154.13 plus interest in the amount of \$35,722.36, for a total
of \$117,876.49 together with costs.

Dated: November 17, 1975

JOHN K. ADAMS

CLERK

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

JOSEPH C. WEBER, INC.,

Plaintiff,

vs.

Civil 1970-4

UNITED STATES OF AMERICA,

Defendant.

DECISION
and
ORDER

CURTIN, DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH C. WEBER, INC.,

Plaintiff,

vs.

Civil 1970-4

UNITED STATES OF AMERICA,

Defendant.

APPEARANCES: RAICHE, BANNING, WEISS & HALPERN
(FRANK G. RAICHE & R. WILLIAM STEPHENS,
of Counsel), Buffalo, New York, for
Plaintiff.

SCOTT P. CRAMPTON, Assistant Attorney
General, JEROME FINK & THOMAS R. JONES,
Attorneys, Tax Division, Department of
Justice, Washington, D. C.

and

RICHARD J. ARCARA, United States Attorney
Buffalo, New York, for the Government.

On November 17, 1975 after a jury trial,
judgment was entered in favor of the plaintiff and
against the defendant for the sum of \$82,154.13, plus
interest. The judgment was based upon the answer to
special questions posed to the jury at the conclusion
of the case. The defendant moves pursuant to Rule 50(b)
of the Federal Rules of Civil Procedure for a judgment

[-2-]

notwithstanding the verdict. The plaintiff has also moved for the same relief, seeking an order setting aside the jury finding in respect to question "1."

The plaintiff is a corporation engaged in the business of the distribution of fuel oil. Mr. Weber is the president and holder of 99% of the corporate stock, with his wife holding the remaining 1%. During the years in question, the corporation acquired the fuel oil it sold to its customers from Mobil Oil Company. Mobil Oil Company paid Joseph C. Weber individually certain monies with respect to the sale of fuel oil. In a stipulation entered into between the parties, these payments were described as "commissions." Mr. Weber reported this income on his individual income tax return for the years in question and also a salary received from the corporation. The Government claims that the "commissions" paid to Mr. Weber should in fact have been considered as income to the corporation. The Government argues that the money received from Mobil Oil Company was in fact earned by the corporation. Because of this position, assessments were made by the Commissioner of Internal Revenue against

[-3-]

the plaintiff corporation and this refund suit followed.

The plaintiff's motion is concerned with question "1" to the jury, which read:

Were the monies paid by Mobil Oil Company to Mr. Joseph Weber during 1963, 1964 and 1965 earned by Joseph C. Weber, Inc. (Weber Oil Company), or by Joseph C. Weber, individually?

JOSEPH C. WEBER, INC. X
JOSEPH C. WEBER

The jury decided that the monies were earned by Joseph C. Weber, Inc. If the jury had answered the question the other way, that would have ended the lawsuit in favor of the plaintiff. The plaintiff argues that permitting the jury to determine who earned the money was in error because the parties had previously agreed in their stipulation that the payments made to Mr. Weber were "commissions." Plaintiff argues that the stipulation ended the case, for the use of the word "commissions" in its viewpoint indicated that Mr. Weber in fact earned the money. Although there was no question that the monies were paid to Mr. Weber as an individual, yet this fact does not end the inquiry about who earned the money, Mr. Weber individually, or the corporation. The Government argued that the

[-4 -]

monies paid were temporary allowances. This was a fact question for the jury to decide in spite of the stipulation. For that reason, the motion of the plaintiff is denied.

The second question presented to the jury read:

If the answer to question "1" is Joseph C. Weber, Inc. (Weber Oil Company), then answer this question: Were the monies paid intended by Joseph C. Weber, Inc. to be compensation or dividends to Joseph C. Weber as an individual at the time these payments were received by Joseph C. Weber?

COMPENSATION
DIVIDENDS

 X

The Government argues that permitting the jury to answer this question permitted a retroactive adjustment of the compensation paid its officers. However, the stipulation between the parties, the tax returns of the corporation and of Mr. Weber were sufficient to raise a factual question. Considering all of the relationships between the parties, the jury determination was not an unfair one and should not be set aside under Rule 50(b).


The jury decided, in answer to question "3," that the compensation paid was reasonable. Since the

[-5-]

evidence in the case easily supported this conclusion, the answer to this question should not be disturbed.

The cases cited by the Government in support of its position are tax court cases in which the findings of fact were made by the tax court judge. Here the findings were made by the jury. This court does not find the facts as the tax court does, but must leave that role to the jury. The jury's verdict should not be disturbed unless it is obviously unsupported by evidence. Where there is evidence to support the verdict, a motion for judgment notwithstanding the verdict pursuant to Rule 50(b) of the Federal Rules of Civil Procedure must be denied. 5A MOORE'S FEDERAL PRACTICE, ¶50.11 (Second Edition, 1975). All motions are denied.

So ordered.


JOHN T. CURTIN
United States District Judge

DATED: February 19, 1976

CERTIFICATE OF SERVICE

It is hereby certified that service of this appendix has been made on opposing counsel by mailing four copies thereof on this 20th day of July, 1976, in an envelope, with postage prepaid, properly addressed to him as follows:

Ralph L. Halpern, Esquire
10 Lafayette Square
Buffalo, New York 14203

Gilbert E. Andrews *per*
GILBERT E. ANDREWS,
Attorney.